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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME XX

**DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES**

DECEMBER, 1910, TO MAY, 1911

REPORTED BY THE COMMISSION



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1911**



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INTERSTATE COMMERCE COMMISSION.

MARTIN A. KNAPP, OF NEW YORK, Chairman.

JUDSON C. CLEMENTS, OF GEORGIA, Chairman.

CHARLES A. PROUTY, OF VERMONT.

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CHARLES C. McCHORD, OF KENTUCKY.

BALTHASAR H. MEYER, OF WISCONSIN.

EDWARD A. MOSELEY, Secretary.

December 31, 1910, Chairman Knapp resigned from the Commission and the term of Commissioner Cockrell expired; on that date Commissioners McChord and Meyer were inducted into office.

January 13, 1911, Commissioner Clements was made Chairman.

April 18, 1911, Secretary Moseley died.

INTERSTATE COMMERCE COMMISSION REPORTS.

No. 3252.

EMPIRE WALL PAPER COMPANY

v.

BOSTON & MAINE RAILROAD ET AL.

Submitted September 19, 1910. Decided December 12, 1910.

Under the circumstances disclosed by the record in this case the Commission is unable to find that the initial carrier was under the duty of routing the shipment other than as indicated in the shipper's instructions. Complaint dismissed.

Lewis Voight, jr., and William J. Jones for complainant.

Edgar J. Rich, by Edward A. Haid, for Boston & Maine Railroad.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

Complainant corporation asks reparation amounting to \$25.59 for alleged misrouting of a carload of paper hangings shipped September 18, 1908, from Worcester, Mass., to St. Louis, Mo. Complaint was filed April 25, 1910. The shipment was delivered to the Boston & Maine Railroad at Worcester, the car being loaded upon one of its switch tracks. The instructions given by the shipper were as follows: "B. & M., Cumberland Gap Desp." It was the intention of the shipper, understood by the carrier, that the above instructions called for the transportation of the shipment via the Boston & Maine Railroad and the steamship and rail lines forming the through route known as the Cumberland Gap Despatch. The shipment was carried by the Boston & Maine Railroad from Worcester to Boston, Mass., where it was delivered to the Cumberland Gap Despatch lines for further transportation to St. Louis. Via the route the shipment moved the rate published and collected was 53 cents per 100 pounds.

On the date of the movement of this shipment the Boston & Maine Railroad had in effect a rate of 1½ cents per 100 pounds for the transportation of property in carloads from its tracks to its connection

with the New York, New Haven & Hartford Railroad at Worcester. At the same time the Cumberland Gap Despatch had in effect a rate of 45 cents from points on the New York, New Haven & Hartford Railroad at Worcester to St. Louis, Mo., via the New York, New Haven & Hartford Railroad to Providence, R. I., and the Cumberland Gap Despatch beyond. The tariffs naming this rate further specified that switching charges of the Boston & Maine Railroad at various points, including Worcester, should be absorbed in the 45-cent rate. The New York, New Haven & Hartford Railroad, however, appears not to have been a party to the last-mentioned tariffs, the offer really being that the Cumberland Gap Despatch operating from Providence to St. Louis would absorb the cost of bringing the property from Worcester to Providence.

It is the complainant's contention that the Boston & Maine Railroad, under this state of facts, was legally bound to switch the shipment in question to the New York, New Haven & Hartford Railroad at Worcester for transportation via Providence under the 45-cent rate. This contention we can not sustain. The routing instructions given were followed. No rate was indicated in the instructions nor was the initial carrier in any way notified that the shipper looked to it to secure a lower rate via any other route than the one indicated. Upon these circumstances we do not find that the initial carrier was under the duty of routing the shipment other than as indicated in the shipper's instructions.

The complaint will be dismissed.

20 I. C. C. Rep.

No. 2798.

CITY OF ASHLAND

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY ET AL.

Submitted November 1, 1910. Decided December 12, 1910.

Maintenance of rail-lake-and-rail rates from eastern points to Ashland, Wis., which are higher per 100 pounds than rail-and-lake rates from same points of origin to Duluth, Minn., is not prohibited by act to regulate commerce.

W. S. Cate and A. W. Sanborn for complainant.

O. E. Butterfield, Henry Wolf Bikle, and Clyde Brown for defendants.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The city of Ashland, in the state of Wisconsin, alleges that defendants subject it to undue disadvantage, and give unreasonable preference to Duluth, Minn., and Superior, Wis., by the maintenance of rates for the transportation of freight by rail and lake from New York, Pittsburg, and other eastern points to Duluth and Superior which are less per 100 pounds than the rates charged for transportation from the same points by rail-lake-and-rail to Ashland.

Ashland is a city of about 15,000 inhabitants on the southern shore of Lake Superior, 75 miles east of Duluth by rail. In 1896 the defendant lake lines, the Western Transit Company and the Erie & Western Transportation Company, discontinued their service to Ashland, which for many years had been a port of call. Prior to the withdrawal of the lake lines, and for two years thereafter, Ashland enjoyed the same rail-and-lake rates from eastern points as Duluth. Since the spring of 1898 traffic shipped from the east to Ashland via the lake lines has been carried to Duluth by water and thence by rail to Ashland under joint rail-lake-and-rail rates, which are higher than the rail-and-lake rates to Duluth. From New York City the rates involved in the proceeding are, in cents per 100 pounds, as follows:

To Duluth.

Class....	1	2	3	4	5	6
Rate	68	59	45	33	28	24

To Ashland.

Class....	1	2	3	4	5	6
Rate....	83	72	54	38	32	26

The local rates of the Northern Pacific Railway Company, Duluth to Ashland, are, in cents per 100 pounds, as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	30	25	20	16	10	13	10	8	7	6

Ashland is given the same rail-lake-and-rail rates from the east as St. Paul and Minneapolis. Out of the rate to Ashland, the eastern rail line and the lake line each receives less than its division of the rail-and-lake rate to Duluth, and the Northern Pacific considerably less than its local rate, Duluth to Ashland. Canal-lake-and-rail rates are in force, New York to Ashland, which are less than the rail-and-lake rates to Duluth. No complaint is made of the amount of the rate, provided the defendants may lawfully maintain higher rates to Ashland than to Duluth. The relief asked is an order requiring the defendants to cease and desist from charging more for transportation to Ashland than to Duluth.

Ashland jobbers desire to compete in common territory with Duluth jobbers. A large part of the merchandise handled by wholesalers at both cities is purchased in the east and carried thence by rail and lake. In reaching the retail dealer at any point where the rates from Duluth and Ashland are the same, the Ashland jobber is at a disadvantage which is measured by the difference between the rates to Duluth and Ashland from the east. In support of its contention that this disadvantage is the result of unlawful discrimination in rates, Ashland argues that it is a lake port, nearer than Duluth to eastern points of shipment, with ample harbor facilities and sufficient potential tonnage to warrant the lake lines in making it a port of call, and that it is arbitrarily deprived of the natural benefits of its geographical location. Defendants deny that they subject complainant to undue discrimination, deny that they could operate into Ashland with profit, and assert that no provision of the act to regulate commerce imposes upon them an obligation to stop their boats at that port.

Complainant's testimony was for the most part directed toward proving that defendants' vessels may safely enter its harbor and that its tonnage would be attractive from a business standpoint. A large amount of marine commerce is handled through Ashland, which is the shipping port for the Gogebic Iron Range. During 1909, 490,878 tons of coal were received at, and 3,834,285 tons of iron ore shipped from that port in vessels especially chartered. Ashland is served by

four railroads, the Chicago & North Western; Chicago, St. Paul, Minneapolis & Omaha; Minneapolis, St. Paul & Sault Ste. Marie; and Northern Pacific. Large vessels can safely enter the harbor, but it is questionable whether the dock facilities are adequate for boats of the size now operated by defendants. In the early days considerable freight and passenger business was offered at Ashland in connection with the lumber interests which centered in that neighborhood, but after the lumber tracts were cleared and the lake lines were no longer called upon to move the lumbermen and their equipment, the traffic at that port decreased.

The traffic offered for carriage to and from Duluth is much greater in volume than that at Ashland, and the facilities for handling it at the former point far superior. The boats used by the Erie & Western Transportation Company to-day range in capacity from 3,000 to 5,000 tons, while those operated when Ashland was a port of call were of about 900 tons capacity.

To enter the harbor of Ashland involves a detour of about 47 miles on the part of vessels plying from the Soo to Duluth. It has been estimated by the captain of a packet boat who appeared as a witness for the defendants that under the most favorable circumstances the time consumed by putting into Ashland, docking, discharging and receiving cargo, would be 10 hours, and that if weather and other conditions were unfavorable, the time might be lengthened to 24 hours.

It is said to cost approximately \$400 per day to operate the large boats of the defendant lake lines, but that amount does not cover the entire expense of a day's delay. An addition to the schedule of a boat diminishes the number of round trips it can make during the season of navigation, and consequently its earning capacity as well as its ability to move the freight offered for transportation, unless a compensating amount of tonnage is thereby obtained. If it is true, as stated, that in past years the defendant lake lines have had to place an embargo upon the receipt of freight some time prior to the close of navigation in order to move the traffic already on hand, an extension of their schedule might entail inconvenience and additional expense upon the general shipping public.

Counsel for complainant has estimated that about 1,500 tons of freight per month would be moved to and from Ashland by the defendant lake lines. Defendants' officers have testified that the service to Ashland was unprofitable, and that it was discontinued for that reason. Whatever the fact may be in that respect, any attempt to estimate the effect in tonnage or financial results to the lake lines of resumption of service to Ashland leads to an unprofitable domain of speculation, for we are convinced the regulating statute has vested in the Commission no authority to compel the lake lines

to run their boats to Ashland. If the defendants' right to operate their boats to Duluth and refuse to operate them to Ashland is, as we believe, unrestricted by the act here invoked, it follows that they may lawfully exact higher rates to Ashland than to Duluth as compensation for the additional rail haul to the former point. The complaint will therefore be dismissed.

20 I. C. C. Rep.

No. 3210.

NATIONAL ASSOCIATION OF LETTER CARRIERS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 29, 1910. Decided December 12, 1910.

Defendants tendered in their tariffs special reduced round-trip fares on the certificate plan in connection with convention of complainant, such reduced fares being conditioned upon the presentation of 1,000 or more certificates; less than 1,000 certificates were available for visé and therefore reduced fare for return trip was denied; *Held*, That the tariff provisions are binding and must control. Complaint dismissed.

M. S. Mangan for complainant.

Eben E. Macleod for Western Passenger Association.

F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant corporation filed its petition in behalf of certain persons who attended its biennial convention held at St. Paul, Minn., from August 30 to September 4, 1909, and asks reparation in the sum of \$5,190.57, the difference between the fares paid by such persons and the fares that were available under certain conditions.

Prior to the meeting at St. Paul the secretary of complainant made application to the Western Passenger Association for reduced

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fares on account of the occasion. In a letter from the chairman of the said association it was stated:

The lines interested have individually consented to announce rate of fare-and-a-half on certificate plan on this occasion from points in Western Passenger Association territory on the condition that there shall be 1,000 or more persons in attendance by rail, holding certificates which show the purchase of one-way tickets at \$1 or more.

This tender was subsequently modified to the extent that the reduction applied only from points east of the Missouri River. The secretary of the organization transmitted a copy of this letter to its members, but gave no further directions or instructions in reference to the purchase of tickets. On the third day of the convention and the day on which the joint agent of the Western Passenger Association was to be present in order to execute and return certificates to the persons attending the meeting, the secretary of the organization discovered that notwithstanding the attendance was over 1,400 there were but 888 certificates, and made announcement of that fact in the convention. It was then learned that the St. Louis delegation had purchased 106 summer tourist round-trip tickets, St. Louis to St. Paul and return, and that the Kansas City delegation had purchased 39½ round-trip tickets from Kansas City to St. Paul and return and two one-way tickets. The carriers' agent gave the Kansas City delegation the choice of purchasing the certificate-plan tickets provided for the convention, or the summer tourist tickets, and the delegation chose the latter.

The secretary asked the joint agent if the tickets from St. Louis and Kansas City could be used to make up the required number of certificates, but the agent refused to validate any certificates unless there were a thousand or more. On being asked what could be done, he said he would communicate with headquarters, but the Chicago office of the Western Passenger Association refused to validate less than the required 1,000 certificates. The day on which information was sought from the validating agent of the Western Passenger Association was the last day on which these convention tickets could be purchased, and pending receipt of advice from him neither the association nor its secretary took any action to relieve the difficulty. When informed on the following day that no certificates would be validated unless 1,000 were presented, it was too late to purchase additional certificate-plan tickets. Consequently numerous persons attending the convention, instead of receiving the half-rate return fare were compelled to pay the regular one-way fare.

The summer tourist fare from St. Louis to St. Paul and return and the reduced fare on the certificate plan, including a validation fee of 25 cents, were the same, \$17.50, whereas the reduced fare on the certificate plan Kansas City to St. Paul, plus the validation fee

of 25 cents, was \$15.65, 65 cents in excess of the summer tourist fare. The certificate plan required return not later than September 8; the summer-tourist tickets did not expire until October 31.

Complainant contends that the tender or contract contained in the letter of the chairman of the Western Passenger Association to the secretary of complainant was substantially complied with in that there were in attendance at the convention more than 1,000 persons who paid an aggregate amount for tickets in excess of that necessary to fulfill the contract, and that had the joint agent who went to St. Paul to validate the certificates promptly and definitely advised that the certificates would not be validated complainant would have had time to go out beyond the prescribed radius and secure a sufficient number of persons to purchase certificate-plan tickets to make up the minimum requirement. It is also alleged that there was conflict in the tariffs which contained the reduced fares to the convention, in that some of them made the granting of the reduced return fare dependent upon the attendance of 1,000 or more persons at the convention, while others stipulated that it would be granted only upon the condition that 1,000 or more persons were in attendance holding certificates showing the purchase of one-way tickets at \$1 or more.

An examination of the tariffs on file with the Commission discloses that all of them provided certificate-plan reduced fare arrangements. While certain tariffs specifically stated that the reduced fare would not be granted except upon condition that 1,000 or more were in attendance holding certificates showing the purchase of full fare one-way tickets, other tariffs provided for the attendance of 1,000 or more. However, even the tariff which was couched in the broadest terms, that is, without any qualification in immediate connection with the attendance provision, contained instructions as follows, which showed conclusively that the reduced fares were obtainable only on the presentation of certificates and the payment of validation fees:

Passengers must purchase one-way tickets to place of meeting or normal (not special or reduced) one-way fare, as shown in current I. C. C. tariffs, and via routes via which such current I. C. C. tariffs apply, and obtain a certificate receipt. This receipt when signed by the secretary of the meeting, stamped by the joint agent, and presented to the ticket agent at the place of meeting prior to final return limit will be honored for "delegate" return ticket at reduced fare shown below.

The usual and convenient way of determining whether or not the required number is in attendance is by requiring the presentation of certificates. In fact, the carrier must adopt some such plan in order to assure itself that it is complying with its tariff provisions and with the law. While not uniform in phraseology, all of these tariffs provided that the reduced fare would be accorded only upon the certifi-

cate plan, and, reading the tariffs as a whole, there was no conflict in the requirement that a thousand or more should present certificates.

The relief sought may not lawfully be granted. No obligation rested upon the joint agent of the Western Passenger Association to do other than be present at St. Paul on the date specified to visé certificates if a thousand or more were presented to him.

The fact that the carriers would have received approximately the same amount of money had they permitted the tickets from St. Louis and Kansas City to be used in lieu of the necessary number of certificate-plan tickets is immaterial. It is not alone the price, but the terms of the tickets, the provisions of the tariffs and of the law, which determines the obligations of the parties. No one will seriously argue that he has a retroactive right to a 1,000-mile ticket, even though he has traveled more than that distance and paid a higher fare. To include the round-trip tickets would be in direct conflict with the plain terms of the tariffs, which specifically excluded such tickets.

However much we may sympathize with the members of complainant who were compelled to pay higher fares than they anticipated, it is plain from the facts before us that the primary cause of their not securing the reduced fare was the action of those members of the convention from St. Louis and Kansas City who voluntarily purchased a different kind of ticket under which they were accorded privileges not granted under the certificate plan, and thereby the other persons attending the convention were prevented from complying with the conditions which were precedent to reduced return fare. The maxim "He who suffers damage by his own fault is not held to suffer damage" would seem to apply. The complaint must be dismissed.

20 L. C. C. Rep.

No. 3236.

WHEELER LUMBER, BRIDGE & SUPPLY COMPANY

v.

ASTORIA & COLUMBIA RIVER RAILROAD COMPANY
ET AL.

Submitted October 10, 1910. Decided December 12, 1910.

Where a carload of lumber was weighed twice and showed a variation, the weight obtained in weighing car both trucks at a time preferred to one obtained by weighing them separately. Return of overcharge required.

P. E. Hoak for complainant.

Carl S. Jefferson, William Ellis, and F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

Charles A. Hart for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of bridge supplies and forest products at Des Moines, Iowa. It filed its petition April 13, 1910, seeking reparation on a carload of fir lumber shipped from Rainier, Oreg., to Hartley, Iowa, February 25, 1909. The car was weighed on the track scales at Vancouver, Wash., March 5, 1909, and a weight of 75,800 pounds was reported. At Austin, Minn., March 20, 1909, the car was reweighed, and a weight of 78,300 pounds was shown. Both of these scalings were performed by regular representatives of the Western Railway Weighing Association. Defendants applied to this shipment Rule 810 of Western Trunk Line Circular, I. C. C. No. A-122, which provides that when a difference is shown of 1,000 pounds or more between two scalings of the Western Railway Weighing Association the second weight shall govern. Charges were therefore assessed on 78,300 pounds, the Austin weight, and the claim is based on the excess of 2,500 pounds over the Vancouver weight. But an examination of the tariffs discloses that this rule is not contained in nor is it referred to in the commodity tariff naming the rate under which the traffic moved, and, therefore, has no application to this case.

Complainant produced no witnesses at the hearing, its evidence consisting of affidavits as to the character and weight of this and similar shipments, together with a letter from the agent of the Spokane, Portland & Seattle Railway at Vancouver stating that the car was weighed by the regular weighmaster at that point.

The complaint is directed not to the reasonableness of the rule quoted but to the accuracy of the Austin scaling. At Vancouver the car appears to have been weighed as an entirety, whereas defendants admit that the Austin scaling was made in two drafts; that is, one set of trucks of the car was placed in the center of the scale and one half of the car weighed, and the same method was then used in weighing the other half. No actual measurement was made to determine that the trucks were exactly in the center of the scale, and complainant insists that as a deviation of even a few inches from the center would lead to considerable inaccuracy it would be unsafe to accept the weighing in two drafts over the single scaling. Complainant further shows that the second weight was determined after the car had been long in transit over mountain ranges and subject to more or less snow and rain. No question was raised as to the Vancouver scaling being performed as an entirety and in a competent and disinterested manner, and on the record we find that the weight there ascertained should govern.

Defendants have raised the question of the Commission's jurisdiction to hear and determine a cause of this nature, but we are convinced that their objection is not well founded. In *Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.*, 15 I. C. C. Rep., 87, the Commission determined that it has authority "to award damages in a case where a carrier collects a greater sum on an interstate shipment than is fixed by its published tariffs," and entered an order requiring the refund by the carrier of what is commonly known as a straight overcharge. When a carrier publishes a rate in cents per 100 pounds and applies such rate to a weight in excess of the actual weight of the shipment, the total charges collected are in excess of the amount provided by its tariffs, and the Commission may order the carrier to refund the amount so exacted. An order will be entered requiring defendants to refund the overcharge of \$13.75, with interest from January 11, 1910.

No. 3364.
ALBERT STEINFELD & COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted October 5, 1910. Decided December 12, 1910.

Joint rate of \$1.22 on laundry soap from St. Louis, Mo., to Nogales, Ariz., in force on the date shipment moved, found, in view of the circumstances of this case, to be unreasonable at that time. Reparation awarded.

W. F. Ellsworth for complainant.

F. C. Dillard and *R. S. Stubbs* for Southern Pacific Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; and Galveston, Harrisburg & San Antonio Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

Complainant is a corporation doing business at Tucson, Ariz., and asks reparation in the sum of \$86.16 on shipment October 17, 1908, of one carload of soap from St. Louis, Mo., to Nogales, Ariz. Complaint also prays the establishment of a reasonable maximum rate for the future, but that feature was abandoned at the hearing.

The shipment consisted of 71,800 pounds of common laundry soap, on which was charged \$875.96, at a joint rate of \$1.22 per 100 pounds, which is alleged to be excessive to the extent that it exceeded \$1.10 per 100 pounds. A portion of the town of Nogales is located in the state of Sonora, Republic of Mexico, and a portion in the territory of Arizona. Nogales, Ariz., is the terminus of a branch line of the Southern Pacific System, starting at Fairbanks, Ariz., and Nogales, Mexico, is on the Sonora Railway. The tracks of these lines join at the international boundary.

Effective March 5, 1908, a joint commodity rate of \$1.10 per 100 pounds, carloads, minimum weight 40,000 pounds, from St. Louis to Nogales, Ariz., was established, based on the terminal rate from Mississippi River points to Pacific coast terminals, including Los Angeles, Cal., and applicable to Guaymas, Mexico, 75 cents per 100 pounds, plus the local rate of the Sonora Railway from Guaymas to

Nogales, Mexico. Effective August 10, 1908, the rate was advanced to \$1.22 per 100 pounds, the second factor being a transit rate of the Sonora Railway applicable from Guaymas to Nogales, Ariz., 47 cents per 100 pounds. A transit rate in the sense here used is a rate applicable to business originating in the United States, transported to Mexico, and destined to a point in the United States. In Supplement No. 19, effective August 14, 1908, to Southern Pacific Tariff I. C. C. No. 25, the rate was reduced to \$1.10 per 100 pounds, but this supplement, for failure to give statutory notice, was rejected by the Commission, thereby leaving in effect the previous rate of \$1.22 per 100 pounds. Complainant had directed the attention of the carriers to the fact that the \$1.22 rate was not made on basis of the 75-cent terminal rate and the Sonora Railway's local rate of 35 cents (which was actually used instead of the transit rate of 47 cents) and awaited the effective date of the supplement containing the \$1.10 rate before the shipment of October 17 was made. In Supplement No. 20, effective November 9, 1908, the rate was again reduced to \$1.10. Effective January 18, 1909, the rate was increased to \$1.15 to meet an advance in the local rate of the Sonora Railway from Guaymas to Nogales, Mexico. Effective March 23, 1910, the rate was further increased to \$1.58 per 100 pounds, which is fifth class, applicable on soap, carloads, in Western Classification, and is made on El Paso combination of 63 cents St. Louis to El Paso and 95 cents El Paso to Nogales. The rate on soap from St. Louis, Mo., to Tucson, Ariz., which is 138 miles west of Nogales, was, at time of shipment, \$1.71 per 100 pounds; the rate is now \$1.53. The rate on soap, carloads, from St. Louis, Mo., to Phoenix, Ariz., is \$1.62 per 100 pounds. In the case of *Maricopa County Commercial Club v. S. F., P. & P. Ry. Co.*, 19 I. C. C. Rep., 257, the Commission established as the fifth class rate from St. Louis to Phoenix \$1.43 per 100 pounds. If the rate of \$1.43 prescribed as applicable to Phoenix were applied at intermediate points the through rate to Nogales would be based on the rate to Phoenix plus the local rate of 24 cents from Fairbanks, Ariz., to Nogales, making a combination of \$1.67; but as that basis is higher than the \$1.58 rate now in effect to Nogales, the latter would not be changed.

The position of defendants is that the combination which established the rate on soap from St. Louis to Nogales, Mexico, was the Guaymas rate, water compelled, and the rate of the Sonora Railway in the Republic of Mexico, a government-compelled rate, and are not proper factors to be used in determining the reasonableness of the joint rate. They consider that complainant has an equitable claim but doubt the legality of the Commission's granting reparation, because, on account of the fourth section of the amended law, the present rate is made on the normal basis of class rating, disregarding

water competition alleged to make the rate to Guaymas, and is not unreasonably high as compared with rates prescribed by the Commission in the decision above referred to, or with rates on the same commodity in contiguous territory.

If complainant had been alert, inquiry would have developed the fact that the lower rate of \$1.10 on which it had expected to ship had not become effective because of failure to give statutory notice. However, the fact that a carrier has forwarded to the Commission for filing a tariff containing a lower rate is certainly to be considered in the determination of whether or not the higher rate was unreasonable.

Defendants since this shipment moved have chosen to disregard water competition said to obtain at Guaymas and reflected in the *quantum* of the rate at Nogales, and have established the rate to Nogales on the fifth class basis. A rate reasonable as of to-day may have been unreasonable in the past or may become unreasonable in the future. It is not necessarily required by the law that the rate found to be unreasonable at the time of complaint shall be prescribed for the future, or that a rate for the future must, as a prerequisite to reparation, be prescribed. Defendants at the time shipment moved recognized water competition, a combination which was used aggregated \$1.10, the rate before and after the shipment was \$1.10, and defendants attempted to establish \$1.10 as the legal rate at the time of the shipment. Carriers may meet water competition in their own interest, and when they choose to regard it a shipper should receive the benefit of its recognition.

In view of all the facts and circumstances of this case we are of the opinion that the rate charged was, on the date this shipment moved, unjust and unreasonable to the extent of 12 cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$86.16, with interest from November 4, 1908. An order will be entered accordingly.

In view of the abandonment by complainant of its prayer for the establishment of a reasonable rate for the future, and changes of circumstances and conditions since the shipment was made, no rate for the future will be prescribed.

No. 3335.

McCAULL-DINSMORE COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted October 28, 1910. Decided December 12, 1910.

Rate of 75 cents for transportation of mixed carload of cracked corn and whole corn from Elk Point, S. Dak., to Anaconda, Mont., found unreasonable and rate of 55 cents established for future. Reparation awarded.

S. J. McCaull for complainant.

William Ellis and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

F. G. Wright for Chicago, Milwaukee & Puget Sound Railway Company.

John Lind for Butte, Anaconda & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation, with principal place of business at Minneapolis, Minn. On February 8, 1910, it shipped over defendants' lines from Elk Point, S. Dak., to Anaconda, Mont., one carload of sacked corn, half cracked and half whole, weighing 50,000 pounds, on which freight charges were collected by defendants at the rate of 75 cents per 100 pounds, amounting to \$375. It is alleged that the rate was unreasonable in so far as it exceeded 55 cents, and reparation is asked.

At the time shipment moved there was in effect via the defendants' lines a joint rate of 55 cents per 100 pounds on brewer's meal, brewer's grits, brewer's flakes, bran, middlings, shorts, cracked or chopped corn, corn meal, hominy, in straight or mixed carloads, from the point of origin to destination, and a rate of 50 cents per 100 pounds on whole corn in straight carloads. The 75-cent rate assessed is a class-D distance rate applicable to corn and feed in straight or mixed carloads.

Defendants' tariffs do not provide for the carriage of mixed carloads of cracked corn and whole corn at the higher rate on the former article. But it is difficult to understand why a 55-cent mixed carload rate

should be allowed upon the commodities mentioned in the foregoing paragraph and denied upon cracked corn and whole corn; and no evidence was offered by defendants at the hearing in support of the reasonableness of the higher rate upon the mixture shipped by complainant.

Upon consideration of all the facts we are of opinion and so find that the rate assessed was unreasonable to the extent that it exceeded 55 cents, and that complainant is entitled to reparation in the sum of \$100, with interest from March 1, 1910. Defendants will be required to cease and desist from charging their present rate of 75 cents per 100 pounds for the transportation of mixed carloads of cracked corn and whole corn from Elk Point, S. Dak., to Anaconda, Mont., and to establish in lieu thereof a rate not in excess of 55 cents.

20 I. C. C. Rep.



No. 3462.

TEXICO TRANSFER COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted October 10, 1910. Decided December 12, 1910.

The originating carrier filed a tariff naming a through, joint rate. Connecting lines named therein had not concurred, and a higher combination rate was therefore applicable. The combination rate found to be unjust and unreasonable and reparation awarded against originating carrier.

Rufus B. Daniel for complainant.

R. H. Carrington for Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant conducts a joint transfer and storage business at El Paso, Tex. December 16, 1907, there was shipped from Evansville, Ind., to El Paso, Tex., a carload of mixed furniture, via the Louisville & Nashville Railroad to East St. Louis, Ill.; and thence via the lines of the Missouri, Kansas & Texas Railway Company and the Texas & Pacific Railway Company to El Paso, Tex., consigned to complainant. Formal complaint alleging overcharge was filed August 15, 1910, but the matter had been informally brought to our attention July 27, 1909. Charges were collected on a combination of rates based on East St. Louis. The rate to East St. Louis was 11 cents per 100 pounds, minimum 24,000 pounds; beyond East St. Louis the rate was 89 cents, minimum weight 14,000 pounds. The charges aggregated \$151. The tariffs upon which the combination rate was constructed were duly established by the participating carriers.

Complainant alleges that the rate which should have been applied was a joint through rate of 93 cents, minimum 14,000 pounds, as published by the Louisville & Nashville Railroad Company, and that by reason of the application of the combination rate via East St. Louis an unlawful overcharge in the amount of \$20.80 accrued.

The defendants each disclaim liability for the overcharge. The Louisville & Nashville Railroad Company, in support of its disclaimer, relies on the joint through rate of 93 cents referred to above and says that it billed the shipment at that rate and received for its haul to East St. Louis its proportion thereof.

The Southwestern Lines had published and filed with the Commission a tariff effective June 29, 1907, naming a rate of 93 cents on mixed furniture, in carloads, Evansville, Ind., to El Paso, Tex., via the lines over which the shipment moved; in this tariff these lines were named as participating carriers, but the Louisville & Nashville Railroad Company had not at the time of shipment filed its concurrence and could not legally participate in the 93 cent rate therein named. By supplement effective November 10, 1907, and prior to the movement, the name of the Louisville & Nashville Railroad Company was stricken from the list of participating carriers in the Southwestern Tariff. The Louisville & Nashville Railroad Company, however, had filed a copy of the Southwestern Lines Tariff as of its own issue. This tariff so filed named the Missouri, Kansas & Texas Railway Company and the Texas & Pacific Railway Company as participating carriers therein, but without their consent.

In *Black Horse Tobacco Co. v. I. C. R. R. Co.*, 17 I. C. C. Rep., 588, we had a somewhat similar state of facts before us, and we there expressed the view that where an initial carrier publishes a tariff naming joint rates from stations upon its lines to destinations upon a connecting line, in which tariff the connecting line does not concur, the initial line thereby becomes responsible to the shipper under its tariff. If the shipper is compelled to pay, under rates legally in effect, a greater transportation charge than that named in such tariff, he may recover from the initial carrier the difference if the rate published by it is found to be reasonable. The Louisville & Nashville Railroad Company in the present instance admits the reasonableness of the 93-cent rate, and it assumed at the time of shipment that such was the legally established joint through rate.

Upon consideration of all the facts involved we are of the opinion and find that the rate charged was unjust and unreasonable in so far as it exceeded a rate of 93 cents per 100 pounds, minimum 14,000 pounds, and that reparation should be awarded against the Louisville & Nashville Railroad Company in the sum of \$20.80, with interest from January 7, 1908, and it will be so ordered.

We find from an examination of the tariffs that, effective February 7, 1910, there was filed a specific joint commodity rate of 89 cents applicable via defendants' lines, and no order for the future will be entered as to the rate.

No. 3312.

DAVENPORT COMMERCIAL CLUB

v.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.

Submitted October 7, 1910. Decided December 12, 1910.

Rate of 23 cents per 100 pounds on cypress lumber, from Minot and Rome, Miss., to Davenport, Iowa, found unreasonable and unduly discriminatory in so far as it exceeds rate of 21 cents contemporaneously in effect from same points of origin to Rock Island and Moline, Ill.

C. A. Steel for complainant.

A. P. Humburg for Yazoo & Mississippi Valley Railroad Company and Illinois Central Railroad Company.

Wallace T. Hughes and *W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company.

E. R. Puffer for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a commercial organization composed of manufacturers and jobbers in business at Davenport, Iowa, and its petition herein was filed on behalf of one of its members, the T. W. McClelland Company, a corporation engaged in the manufacture of sash, doors, blinds, and other inside furnishings for buildings. It is alleged that rates exacted of the McClelland Company by defendants for the transportation, during 1909, of numerous carload shipments of cypress lumber from Minot and Rome, Miss., to Davenport, Iowa, were unreasonable and unjustly discriminatory in so far as they exceeded the rates contemporaneously in force from the same points of shipment to Rock Island and Moline, Ill. Reparation is asked.

Davenport is on the west bank of the Mississippi River, opposite Rock Island and Moline. The three cities are generally grouped for rate-making purposes, and prior to October 1, 1908, the rate for the carriage of cypress lumber from Minot and Rome to each of them was 21 cents. On the date mentioned the rate to Davenport was increased to 23 cents, although the rate to Rock Island and Moline

was not advanced. Defendants admit that there is no reason for the maintenance of a higher rate to Davenport and have stated their intention to restore the former relationship, but the rate to Davenport has not yet been reduced.

We are of opinion that the maintenance of a rate for the transportation of cypress lumber from Minot and Rome to Davenport higher than the rate contemporaneously in force from the same points to Rock Island and Moline is unreasonable and unduly discriminates against traffic to Davenport, and that complainant is entitled to reparation. At the hearing defendants questioned the accuracy of amount of reparation claimed, and agreed that any award of damages might include shipments made since complaint was filed. No order for reparation will be made at this time, and the case will remain open for ninety days to enable the parties to file with the Commission an exact statement of the amount due the McClelland Company. An order will now be entered, however, requiring defendants to cease and desist from the discrimination against Davenport and to maintain for the future rates for the transportation of cypress lumber, in carloads, from Minot and Rome to Davenport which shall not exceed the rates contemporaneously in force to Rock Island and Moline, or either of said points.

20 I. C. C. Rep.

Nos. 1084, 1085, and 1086.

GEORGE S. LOFTUS

v.

PULLMAN COMPANY ET AL.

Submitted November 30, 1910. Decided December 12, 1910.

on these cases being called for rehearing; *Held*, That the orders heretofore entered in these cases should be modified so that the maximum rate for a lower berth from St. Paul to Seattle shall not exceed \$11, and for an upper berth, \$8.80; from St. Paul to Chicago the upper-berth rate not to exceed \$1.60; from St. Paul to Superior, the upper-berth rate not to exceed \$1.25; and from St. Paul to Fargo or to Grand Forks, the upper-berth rate not to exceed \$1.60.

James Manahan for complainant.

F. B. Daniels, G. S. Fernald, and M. D. Munn for Pullman Company.

J. D. Armstrong, W. R. Begg, E. C. Lindley, J. G. Drew, and M. Gruber for Great Northern Railway Company.

Thomas Wilson for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

ONE, Commissioner:

These cases involve the charges on what are generally known as Pullman car berths and are at present before the Commission upon a motion for rehearing made by the carriers defendant. On March 15, 1910, the Commission entered an order in these cases reducing the rate for the upper berth from St. Paul to Chicago from \$2 to \$1.50, and from St. Paul to Superior, Wis., from \$1.50 to \$1.10. 18 I. C. C. Rep., 135. The Commission also ordered a reduction of the rate from St. Paul to Grand Forks, N. Dak., from \$2 to \$1.50 for upper berths, and the rate upon lower berths from St. Paul to Seattle was reduced from \$12 to \$10 and from \$12 to \$8.50 on upper berths. The rate on lower berths from St. Paul to Fargo was reduced from \$2 to \$1.50, and on upper berths from \$2 to \$1.10. The Commission was appealed to by the 20 I. C. C. Rep.

INTERSTATE COMMERCE COMMISSION

or a rehearing upon the ground that ver-
gence of the carriers, had not been presented to
and they desired to make a further presentation of the
This motion was granted by the Commission after the
court of the United States for the seventh circuit had declined
an injunction pendente lite against the order of the Commis-
sioning into effect. Subsequent, however, to the Commission
by a rehearing the court granted an injunction staying the
reversal of the order until such time as the Commission could
the carriers opportunity to present more fully matters which the
Commission had not been in their minds at the time of the original

... bring called for rehearing, the Pullman Company,
laid before the United States a new schedule of
throughout the principle enunciated in the original
charge for the upper berth should be ~~different~~ ^{the same} as
the lower berth. Whereas the Commission in the time
had deemed a 25 per cent difference between the
reasonable, the Pullman Company maintains in the
schedule covering approximately 20,000 miles of the rail-
road system in which the upper berth is this
20 per cent higher than the lower berth. This
advised by the carrier that a 20 per cent increase in this
upper berth rate to \$5.50 will result in a 20 per cent
increase in the total fare to New York and
Chicago from \$10.00 to \$12.00. The carrier also
states that the proposed 20 per cent increase in the
upper berth rate will result in a 20 per cent increase in the
total fare to New York and Chicago from \$10.00 to \$12.00.
The carrier also states that the proposed 20 per cent increase in the
upper berth rate will result in a 20 per cent increase in the
total fare to New York and Chicago from \$10.00 to \$12.00.
The carrier also states that the proposed 20 per cent increase in the
upper berth rate will result in a 20 per cent increase in the
total fare to New York and Chicago from \$10.00 to \$12.00.

... make no increase in
the proposed reduction
the percentage of
... below the pre-

From—	Present rate.	Proposed rate.
New York City to La Porte, Ind.....	\$5.00	\$4.50
New York City to South Bend, Ind.....	5.00	4.50
New York City to Tampa, Fla.....	8.50	7.50
New York City to St. Augustine, Fla.....	7.00	6.25
New York City to Jacksonville, Fla.....	6.50	6.00
New York City to Savannah, Ga.....	5.50	5.00
New York City to Charlotte, N. C.....	4.00	3.75
New York City to High Point, N. C.....	3.50	3.25
New York City to Bay St. Louis, Miss.....	8.00	7.75
Philadelphia, Pa., to Tampa, Fla.....	8.00	7.00
Philadelphia, Pa., to St. Augustine, Fla.....	7.00	6.00
Philadelphia, Pa., to Jacksonville, Fla.....	6.50	5.75
Philadelphia, Pa., to Charleston, S. C.....	4.50	4.00
Washington, D. C., to Tampa, Fla.....	7.00	6.25
Washington, D. C., to St. Augustine, Fla.....	6.00	5.00
Washington, D. C., to Savannah, Ga.....	4.50	4.00
Norfolk, Va., to Tampa, Fla.....	6.50	5.50
Richmond, Va., to New Orleans, La.....	6.50	6.25
Richmond, Va., to Mobile, Ala.....	6.00	5.50
Richmond, Va., to Pensacola, Fla.....	6.00	5.25
St. Louis, Mo., to New Orleans, La.....	4.50	4.25
Denver, Colo., to Seymour, Mo.....	5.50	5.25
Denver, Colo., to Springfield, Mo.....	5.50	5.00
Denver, Colo., to San Francisco, Cal.....	9.50	9.00
Topeka, Kans., to Seymour, Mo.....	2.50	2.00
Topeka, Kans., to Galveston, Tex.....	5.50	5.00
Topeka, Kans., to San Antonio, Tex.....	6.00	5.50
Fort Scott, Kans., to St. Augustine, Fla.....	7.50	6.75
Kansas City, Mo., to San Antonio, Tex.....	6.00	5.50
Kansas City, Mo., to Fort Worth, Tex.....	4.00	3.50
New Orleans, La., to Eagle Pass, Tex.....	5.00	4.50
Beaumont, Tex., to El Paso, Tex.....	6.00	5.50
Beaumont, Tex., to Eagle Pass, Tex.....	3.50	3.00
Omaha, Nebr., to San Francisco, Cal.....	11.50	11.00
Omaha, Nebr., to Salt Lake City, Utah.....	7.00	6.50
Galveston, Tex., to Eagle Pass, Tex.....	3.00	2.75
Houston, Tex., to El Paso, Tex.....	5.50	5.00
Houston, Tex., to Eagle Pass, Tex.....	3.00	2.50
Hutchinson, Kans., to San Francisco, Cal.....	11.00	10.50
St. Paul, Minn., to Portland, Oreg.....	12.00	11.00
St. Paul, Minn., to Seattle, Wash.....	12.00	11.00
St. Paul, Minn., to Billings, Mont.....	6.00	5.50
St. Paul, Minn., to Jamestown, N. Dak.....	2.50	2.00
Duluth, Minn., to Portland, Oreg.....	12.00	11.00
Moorhead, Minn., to Portland, Oreg.....	11.00	9.75
Moorhead, Minn., to Billings, Mont.....	4.50	4.00
Jamestown, N. Dak., to Portland, Oreg.....	10.50	9.50
Miss City, Mont., to Portland, Oreg.....	8.00	7.00
Elk River, Minn., to Billings, Mont.....	6.00	5.25
Billings, Mont., to Portland, Oreg.....	6.50	6.00
Butte, Mont., to Portland, Oreg.....	5.00	4.75
Missoula, Mont., to Portland, Oreg.....	4.50	4.00
Chicago, Ill., to Galveston, Tex.....	8.00	7.00
Chicago, Ill., to San Antonio, Tex.....	8.00	7.50
Chicago, Ill., to San Francisco, Cal.....	14.00	13.00
Chicago, Ill., to Reno, Nev.....	13.00	12.00
Chicago, Ill., to Portland, Oreg.....	14.00	13.00
Chicago, Ill., to Spokane, Wash.....	11.50	11.00
Chicago, Ill., to Salt Lake City, Utah.....	9.50	8.50
Chicago, Ill., to Laramie, Wyo.....	6.50	6.00
Salt Lake City, Utah, to San Francisco, Cal.....	5.50	5.00
Salt Lake City, Utah, to San Diego, Cal.....	8.50	7.25
Reno, Nev., to San Diego, Cal.....	7.00	6.00

Evidence was introduced based upon the actual movement of sleeping-car passengers between St. Paul and Fargo, N. Dak., establishing to our minds the reasonableness of the existing rate of \$2 for a lower berth when compared with rates charged elsewhere for similar distances and time expended in the haul.

In view, therefore, of the full facts presented in the record in these cases, and further having in mind the proposal of the Pullman Com-

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carriers for a rehearing upon the ground that certain facts, through the negligence of the carriers, had not been presented to the Commission, and they desired to make a further presentation of their defense. This motion was granted by the Commission after the circuit court of the United States for the seventh circuit had declined to grant an injunction *pendente lite* against the order of the Commission going into effect. Subsequent, however, to the Commission directing a rehearing the court granted an injunction staying the effectiveness of the order until such time as the Commission could give the carriers opportunity to present more fully matters which the carriers claimed had not been in their minds at the time of the original hearing.

Upon these cases being called for rehearing, the Pullman Company, through its counsel, laid before the Commission a new schedule of rates, extending throughout the United States wherever Pullman cars are operated, recognizing the principle enunciated in the original opinion that the charge for the upper berth should be distinctly less than that for the lower berth. Whereas the Commission in the three cases before it had deemed a 25 per cent differential between the two berths as reasonable, the Pullman Company tendered to the Commission tariffs covering approximately 200,000 miles of the railroads of the United States in which it was proposed to establish a differential of 20 per cent between the upper and the lower berths. The principle adopted by the carrier in its new schedule is this: Where the lower-berth rate is \$1.50 (which is the lowest interstate Pullman berth rate) the rate for the upper berth between the same points will be \$1.25. Where the lower-berth rate is \$1.75 or more the upper-berth rate between the same points will be 80 per cent thereof. To illustrate: The Pullman rate between New York and Chicago is, for a lower berth, \$5. The rate for an upper berth under this schedule will be \$4. So where the rate for a lower berth is \$3.75 the rate for an upper will be \$3; where it is \$2 the rate will be \$1.60; where it is \$10 the upper-berth rate will be \$8; and where it is \$15 the rate will be \$12. In connection therewith reductions were also proposed in a large number of rates upon lower berths. The proposed 20 per cent reduction as to upper berths is to be made upon the basis of the newly established lower-berth rates, thus in many cases reducing the lower berth more than 25 per cent below the present charge for the lower berth.

The new tariffs presented to the Commission make no increases in any rates, but, as stated above, in addition to the proposed reduction in the rate upon upper berths make a considerable percentage cut in the rate upon many of the lower berths. A few illustrations are presented in the following table of lower-berth rates:

From—	Present rate.	Proposed rate.
York City to La Porte, Ind.....	\$5.00	\$4.50
York City to South Bend, Ind.....	5.00	4.50
York City to Tampa, Fla.....	8.50	7.50
York City to St. Augustine, Fla.....	7.00	6.25
York City to Jacksonville, Fla.....	6.50	6.00
York City to Savannah, Ga.....	5.50	5.00
York City to Charlotte, N. C.....	4.00	3.75
York City to High Point, N. C.....	3.50	3.25
York City to Bay St. Louis, Miss.....	8.00	7.75
Philadelphia, Pa., to Tampa, Fla.....	8.00	7.00
Philadelphia, Pa., to St. Augustine, Fla.....	7.00	6.00
Philadelphia, Pa., to Jacksonville, Fla.....	6.50	5.75
Philadelphia, Pa., to Charleston, S. C.....	4.50	4.00
Washington, D. C., to Tampa, Fla.....	7.00	6.25
Washington, D. C., to St. Augustine, Fla.....	6.00	5.00
Washington, D. C., to Savannah, Ga.....	4.50	4.00
Wilmington, Va., to Tampa, Fla.....	6.50	5.50
Wilmington, Va., to New Orleans, La.....	6.50	6.25
Wilmington, Va., to Mobile, Ala.....	6.00	5.50
Wilmington, Va., to Pensacola, Fla.....	6.00	5.25
St. Louis, Mo., to New Orleans, La.....	4.50	4.25
Denver, Colo., to Seymour, Mo.....	5.50	5.25
Denver, Colo., to Springfield, Mo.....	5.50	5.00
Denver, Colo., to San Francisco, Cal.....	9.50	9.00
Topeka, Kans., to Seymour, Mo.....	2.50	2.00
Topeka, Kans., to Galveston, Tex.....	5.50	5.00
Topeka, Kans., to San Antonio, Tex.....	6.00	5.50
Fort Scott, Kans., to St. Augustine, Fla.....	7.50	6.75
St. Louis City, Mo., to San Antonio, Tex.....	6.00	5.50
St. Louis City, Mo., to Fort Worth, Tex.....	4.00	3.50
New Orleans, La., to Eagle Pass, Tex.....	5.00	4.50
Summit, Tex., to El Paso, Tex.....	6.00	5.50
Summit, Tex., to Eagle Pass, Tex.....	3.50	3.00
Omaha, Nebr., to San Francisco, Cal.....	11.50	11.00
Omaha, Nebr., to Salt Lake City, Utah.....	7.00	6.50
Galveston, Tex., to Eagle Pass, Tex.....	8.00	7.75
Houston, Tex., to El Paso, Tex.....	5.50	5.00
Houston, Tex., to Eagle Pass, Tex.....	3.00	2.50
Lawrence, Kans., to San Francisco, Cal.....	11.00	10.50
St. Paul, Minn., to Portland, Oreg.....	12.00	11.00
St. Paul, Minn., to Seattle, Wash.....	12.00	11.00
St. Paul, Minn., to Billings, Mont.....	6.00	5.50
St. Paul, Minn., to Jamestown, N. Dak.....	2.50	2.00
St. Paul, Minn., to Portland, Oreg.....	12.00	11.00
St. Paul, Minn., to Portland, Oreg.....	11.00	9.75
St. Paul, Minn., to Billings, Mont.....	4.50	4.00
Jamestown, N. Dak., to Portland, Oreg.....	10.50	9.50
St. Paul City, Mont., to Portland, Oreg.....	8.00	7.00
St. Paul River, Minn., to Billings, Mont.....	6.00	5.25
Billings, Mont., to Portland, Oreg.....	6.50	6.00
Billings, Mont., to Portland, Oreg.....	5.00	4.75
Billings, Mont., to Portland, Oreg.....	4.50	4.00
Billings, Mont., to Portland, Oreg.....	8.00	7.00
Chicago, Ill., to Galveston, Tex.....	8.00	7.50
Chicago, Ill., to San Antonio, Tex.....	8.00	7.50
Chicago, Ill., to San Francisco, Cal.....	14.00	13.00
Chicago, Ill., to Reno, Nev.....	13.00	12.00
Chicago, Ill., to Portland, Oreg.....	14.00	13.00
Chicago, Ill., to Spokane, Wash.....	11.50	11.00
Chicago, Ill., to Salt Lake City, Utah.....	9.50	8.50
Chicago, Ill., to Laramie, Wyo.....	6.50	6.00
Salt Lake City, Utah, to San Francisco, Cal.....	5.50	5.00
Salt Lake City, Utah, to San Diego, Cal.....	8.50	7.25
Las Vegas, Nev., to San Diego, Cal.....	7.00	6.00

Evidence was introduced based upon the actual movement of sleeping-car passengers between St. Paul and Fargo, N. Dak., establishing to our minds the reasonableness of the existing rate of \$2 for a lower berth when compared with rates charged elsewhere for similar distances and time expended in the haul.

In view, therefore, of the full facts presented in the record in these cases, and further having in mind the proposal of the Pullman Com-
20 I. C. C. Rep.

pany to reduce the rates upon upper berths throughout the United States wherever Pullman cars are operated and to reduce the rates applicable for long hauls in accordance with the Commission's previous conclusions, it will be ordered that the order heretofore entered in these several cases shall be modified as follows:

The present rate of \$2 exacted by the Pullman Company for the use of a lower berth in a first class standard sleeper from St. Paul to Chicago over the lines of the Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Chicago & North Western Railway Company is not found unreasonable, but the rate for the use of an upper berth is unjust and unreasonable to the extent that it exceeds \$1.60.

The present rate of \$1.50 exacted by the Pullman Company and the Great Northern Railway Company for the use of a lower berth in a first class standard sleeper from St. Paul to Superior, Wis., is not found unreasonable, but the rate charged for the use of an upper berth is unjust and unreasonable to the extent that it exceeds \$1.25.

The present rate of \$12 exacted by the Pullman Company and the Great Northern Railway Company for the use of a lower berth in a first class standard sleeper from St. Paul to Seattle is unjust and unreasonable to the extent that it exceeds \$11. The rate for the use of an upper berth is unjust and unreasonable to the extent that it exceeds \$8.80.

The present rate of \$2 exacted by the Pullman Company and the Great Northern Railway Company for the use of a lower berth in a first class standard sleeper from St. Paul to Fargo, N. Dak., is not found unreasonable. The rate for the use of an upper berth is unjust and unreasonable to the extent that it exceeds \$1.60.

The present rate of \$2 exacted by the Pullman Company and the Great Northern Railway Company for the use of a lower berth in a first class standard sleeper from St. Paul to Grand Forks, N. Dak., is not found unreasonable. The rate for the use of an upper berth is unjust and unreasonable to the extent that it exceeds \$1.60.

This order as to the Pullman Company shall go into effect on February 1, 1911 (and the rates herein fixed shall be maintained as maxima for two years from that date), provided the Pullman Company on or before that date shall file with the Commission the schedule of revised and reduced rates proposed and herein referred to, and said company shall be permitted to make such rates effective upon one day's notice, it being understood, however, that this order is not equivalent to a determination of the reasonableness of the new schedule of rates in whole or in part, save where such rates have been specifically considered in the cases now before the Commission.

The order as to the Great Northern Railway Company shall also go into effect on February 1, 1911.

No. 3354.

STATE OF OKLAHOMA; STATE OF IOWA, INTERVENER,
v.
PULLMAN COMPANY ET AL.

No. 3421.

STATE OF KANSAS
v.
SAME.

No. 3454.

STATE OF INDIANA
v.
SAME.

No. 3477.

STATE OF ARKANSAS
v.
SAME.

Submitted November 30, 1910. Decided December 12, 1910.

An order entered directing the Pullman Company to fix rates upon upper berths not exceeding 80 per cent of the rates applicable under the Pullman Company's tariffs upon lower berths, whenever such lower-berth rate is \$1.75 or over, and in cases where the lower-berth rate is \$1.50, the upper-berth rate shall be fixed at a rate not to exceed \$1.25.

The reductions in lower berths which are herein proposed by the Pullman Company, not being involved in the complaints filed by the various states, will not now be the subject of an order by the Commission.

James Manahan for complainants.

F. B. Daniels and *G. S. Fernald* for Pullman Company.

20 I. C. C. Rep.

Charles West, Attorney General, and *W. C. Reeves* for state of Oklahoma.

James Bingham, Attorney General, for state of Indiana.

H. L. Norwood, Attorney General, and *Borders & Walters* for state of Arkansas.

John S. Dawson and *H. R. Tillotson* for board of railroad commissioners of Kansas, and state of Kansas.

H. W. Myers, Attorney General, and *John F. Fletcher*, Assistant Attorney General, for state of Iowa, intervener.

F. C. Dillard for Union Pacific Railroad Company.

E. C. Lindley, *J. G. Drew*, and *J. M. Gruber* for Great Northern Railway Company.

Charles Donnelly for Northern Pacific Railway Company.

Gardiner Lathrop and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

George W. Kretzinger for Grand Trunk Railway Company of Canada.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

Burton Hanson for Chicago, Milwaukee & St. Paul Railway Company.

John F. Finerty, jr., and *O. E. Butterfield* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Lake Shore & Michigan Southern Railway Company; and Chicago, Indiana & Southern Railway Company.

A. P. Burgwin for Pennsylvania Company.

John Barton Payne for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

These cases involve the reasonableness of the rate upon upper berths charged and collected by the Pullman Company. The record in the *Loftus cases*, 18 I. C. C. Rep. 135, previously decided was incorporated in these cases.

STATE OF OKLAHOMA.

The following statement shows the present rates between points complained of by the complainant and the rates which will apply for upper
revised

Between—	Miles.	Present lower and upper berth rates.	Proposed rates.			
			Lower berth. •		Upper berth.	
			The Pullman Co.	State of Okla- homa.	The Pullman Co.	State of Okla- homa.
Wichita and Fort Worth.....	236	\$2.00	\$2.00	.....	\$1.60	\$1.50
Oklahoma City and Fort Worth.....	204	2.00	2.00	.....	1.60	1.50
Lawrence and Fort Worth.....	104	1.50	1.50	.....	1.25	1.25
Alester and Fort Worth.....	191	2.00	1.75	.....	1.40	1.50
Alester and Dallas.....	201	2.00	1.75	.....	1.40	1.50
Skogee and Dallas.....	263	2.00	2.00	.....	1.60	1.50
Wichita and Kansas City.....	189 } 203 }	3.00	2.00	.....	1.60	1.50
Wichita and Kansas City.....	281	2.00	2.00	.....	1.60	1.50
Lawrence and Kansas City.....	268 } 257 }	2.00	2.00	.....	1.60	1.50
Alester and Kansas City.....	337	2.00	2.00	.....	1.60	1.50
Skogee and Kansas City.....	254	2.00	2.00	.....	1.60	1.50
Wichita and Kansas City.....	368	2.50	2.25	.....	1.80	1.75
Oklahoma City and Kansas City.....	400 } 344 } 381 }	2.50	2.25	.....	1.80	1.75
Wichita and Kansas City.....	408 }	2.50	2.00	.....	1.60	1.75
Wichita and Fort Worth.....	318 } 370 }	2.50	2.25	.....	1.80	1.75
Wichita and Fort Worth.....	292	2.00	2.00	.....	1.60	1.75
Lawrence and Fort Worth.....	305	2.50	2.00	.....	1.60	1.75
Wichita and Fort Worth.....	271	2.00	2.00	.....	1.60	1.75
Wichita and Dallas.....	328 } 348 }	2.50	2.25	.....	1.80	1.75
Lawrence and Galveston.....	460	2.50	2.50	.....	2.00	2.00
Wichita and St. Louis.....	584 } 535 }	3.50	3.25	.....	2.60	2.75
Oklahoma City and St. Louis.....	542	3.50	3.25	.....	2.60	2.75
Skogee and St. Louis.....	504	3.00	3.00	.....	2.40	2.50
Wichita and Galveston.....	582	3.00	3.00	.....	2.40	2.50
Oklahoma City and Galveston.....	550	3.00	3.00	.....	2.40	2.50
Wichita and San Antonio.....	617	3.50	3.50	.....	2.80	2.50
Lawrence and San Antonio.....	425	3.00	3.00	.....	2.40	2.50
Alester and St. Louis.....	566	3.00	2.00	.....	2.40	2.50
Lawrence and St. Louis.....	425	3.00	2.75	.....	2.20	2.50
Wichita and St. Louis.....	435	3.00	2.75	.....	2.20	2.50
Wichita and St. Louis.....	439	2.50	2.50	.....	2.00	2.00
Alester and Memphis.....	366	2.50	2.25	.....	1.80	2.00
Oklahoma City and Memphis.....	486	3.00	3.00	.....	2.40	2.25
Lawrence and Kansas City.....	501	3.00	3.00	.....	2.40	2.00
Wichita and Chicago.....	651	4.00	4.00	.....	3.20	3.00
Skogee and Chicago.....	794	4.50	4.50	.....	3.60	3.25
Wichita and Galveston.....	695	4.00	4.00	.....	3.20	3.00
Wichita and San Antonio.....	595	4.50	3.75	.....	3.00	3.00
Alester and Galveston.....	588	4.00	3.50	.....	2.80	2.50
Alester and San Antonio.....	468	4.00	3.00	.....	2.40	2.50
Skogee and Galveston.....	630	4.00	3.75	.....	3.00	2.50
Skogee and San Antonio.....	530	4.00	3.25	.....	2.60	2.50
Wichita and Chicago.....	826	5.00	4.50	.....	3.60	3.50
Oklahoma City and Chicago.....	858	5.00	4.50	.....	3.60	3.50
Alester and Chicago.....	856	4.50	4.50	.....	3.60	3.50
Lawrence and Chicago.....	958	5.50	5.50	.....	4.40	4.00
Skogee and Fort Worth.....	252	2.00	2.00	.....	1.60	1.50
Wichita and Galveston.....	591	4.00	3.75	.....	3.00	3.00
Wichita and San Antonio.....	613	.....	.....	.....	.....	3.00

• No through service.

The Pullman Company filed with this table the following note:

The state of Oklahoma has filed complaint on 48 upper-berth rates (exclusive of one own where there is no through rate). The accompanying table shows a reduction each of said rates, as follows:

	25c.	40c.	50c.	60c.	70c.	75c.	80c.	90c.
Oklahoma asks.....	3	....	21	....	....	9	....	....
Pullman Company propose.....	1	10	2	9	6	....	4	6
	\$1.00	\$1.10	\$1.20	\$1.25	\$1.40	\$1.50	\$1.60	
Oklahoma asks.....	6	.....	.....	1	.....	8	.....
Pullman Company propose.....	2	1	1	.....	4	1	1	

Of the 48 present upper-berth rates, using each one once, they amount to..... \$145. 50
Oklahoma complaint is for reduction to..... 107. 25
Adjustments made to equalize, make reduction to..... 109. 05

The general revision of rates will include similar reductions in upper berths between places in Oklahoma and many places not mentioned in the complaint. This general revision will also reduce 27 lower-berth rates between places in Oklahoma and places outside of Oklahoma which are mentioned in the complaint, although no reduction in lower-berth rates is asked for.

STATE OF KANSAS.

The following statement shows the present rates between points complained of by the complainant and the rates which will apply for upper and lower berths between the same places in the general revision of rates which the Pullman Company proposes:

Between—	Miles.	Present lower and upper berth rates.	Proposed rates.			
			Lower berth.		Upper berth.	
			The Pullman Co.	State of Kansas.	The Pullman Co.	State of Kansas.
Topeka and Chicago.....	525	\$3.00	\$3.00	.....	\$2.40	\$2.50
.....{S. F.	584					
.....{R. I.	606	3.50	3.50	.....	2.80	2.50
Strong City and Chicago.....	457	2.50	2.50	.....	2.00	1.75
Kansas City and Chicago.....	669	.....	.....	.....	.....	2.50
Salina and Chicago ^a	484	3.00	3.00	.....	2.40	2.50
Wichita and St. Louis.....	484	.....	.....	.....	.....	2.50
Newton and St. Louis ^a	469	3.00	3.00	.....	2.40	2.50
Salina and St. Louis.....	537	3.50	3.50	.....	2.80	2.50
Topeka and Fort Worth.....	456	3.50	3.50	.....	2.80	2.50
Strong City and Fort Worth.....	417	3.00	3.00	.....	2.40	2.50
Garden City and Oklahoma City.....	686	4.50	4.50	.....	3.60	3.25
Wichita and Chicago.....	786	.....	.....	.....	.....	3.25
Ellis and Chicago ^a	784	.....	.....	.....	.....	3.25
Holsington and Chicago ^a	602	.....	.....	.....	.....	3.25
Garden City and St. Louis ^a	700	4.50	4.25	.....	3.40	3.25
Colby and St. Louis.....	707	4.50	4.25	.....	3.40	3.25
Scott City and St. Louis.....	802	5.00	5.00	.....	4.00	3.50
Strong City and Galveston.....	697	4.50	4.50	.....	3.60	3.25
Wichita and San Antonio.....	659	4.00	4.00	.....	3.20	3.00
Newton and Chicago.....	586	4.00	3.50	.....	2.80	3.00
Ellis and St. Louis.....	584	4.00	3.50	.....	2.80	3.00
Holsington and St. Louis.....	621	4.00	4.00	.....	3.20	3.00
Garden City and Fort Worth.....	953	5.50	5.50	.....	4.40	4.00
Kansas City and Galveston.....	884					
.....{S. F.	722	4.00	4.00	.....	3.20	3.00
.....{M. K. & T.	877	5.50	5.00	.....	4.00	4.00
Wichita and Galveston.....	883	5.50	5.00	.....	4.00	4.00
Garden City and Chicago.....	942	5.50	5.50	.....	4.40	4.00
Topeka and Galveston.....	969	.....	.....	.....	.....	4.00
Garden City and San Antonio.....	850	5.00	4.75	.....	3.80	3.50
Salina and San Antonio ^a	907	.....	.....	.....	.....	3.50
Colby and Chicago.....	724	5.00	4.50	.....	3.60	3.50
Scott City and Chicago ^a	347	2.50	2.25	.....	1.80	1.75
Newton and San Antonio.....	428	.....	.....	.....	.....	1.75
Topeka and St. Louis.....	419	2.50	2.50	.....	2.00	1.75
Strong City and St. Louis ^a	402	2.50	2.50	.....	2.00	1.75
Garden City and Kansas City.....	424	2.50	2.50	.....	2.00	1.75
Colby and Kansas City.....	376	2.50	2.50	.....	2.00	1.75
Scott City and Kansas City.....	403	2.50	2.50	.....	2.00	1.75
Wichita and Fort Worth.....	333	2.50	2.50	.....	2.00	1.75
Newton and Fort Worth.....	226	2.00	2.00	.....	1.60	1.50
Topeka and Oklahoma City.....	201	2.00	2.00	.....	1.60	1.50
Wichita and Kansas City.....	186	2.00	1.75	.....	1.40	1.50
Newton and Kansas City.....	303	2.00	2.00	.....	1.60	1.50
Salina and Kansas City.....	301	2.00	2.00	.....	1.60	1.50
Ellis and Kansas City.....	252	2.00	2.00	.....	1.60	1.50
Holsington and Kansas City.....						
Strong City and Oklahoma City.....						

^a No through service.

Between—	Miles.	Present lower and upper berth rates.	Proposed rates.			
			Lower berth.		Upper berth.	
			The Pullman Co.	State of Kansas.	The Pullman Co.	State of Kansas.
Kansas City and Lincoln.....	211	\$2.00	\$2.00	.....	\$1.60	\$1.60
Kansas City and Omaha.....	195	2.00	2.00	.....	1.60	1.50
Kansas City and St. Louis.....	283	2.00	2.00	.....	1.60	1.50
Strong City and Kansas City.....	148	1.50	1.50	.....	1.25	1.25
Wichita and Oklahoma City.....	172	1.50	1.50	.....	1.25	1.25
Garden City and Galveston.....	867	6.00	5.50	.....	4.40	4.50
Topeka and San Antonio.....	858	6.00	5.50	.....	4.40	4.50
Kansas City and San Antonio.....	925	6.00	5.50	.....	4.40	4.50
.....	783					
Kansas City and Fort Worth.....	596	4.00	3.50	.....	2.80	3.00
.....	604					
Kansas City and Oklahoma City.....	400	2.50	2.50	.....	2.00	1.75
.....	364					
Newton and Galveston.....	749	4.50	4.50	.....	3.60	3.25
Strong City and San Antonio.....	777	5.50	5.50	.....	4.40	4.00
Newton and Oklahoma City.....	199	2.00	2.00	.....	1.60	1.50

The Pullman Company filed with this table the following note:

The state of Kansas has filed complaint on 50 upper-berth rates (exclusive of eight shown where there are no through rates). The accompanying table shows a reduction of each of said rates, as follows:

	25c.	40c.	50c.	60c.	70c.	75c.	80c.	90c.
Kansas asks.....	2	....	14	....	....	9	....	....
Pullman Company propose.....	2	9	8	5	4	....	3	3
	\$1.00	\$1.10	\$1.20	\$1.25	\$1.40	\$1.50	\$1.60	
Kansas asks.....	9	....	....	5	....	11	....	....
Pullman Company propose.....	1	5	4	....	1	2	3	

Of the 50 present upper-berth rates, using each rate once, they amount to... \$175.00
Kansas complaint is for reduction to..... 129.00
Adjustments made to equalize make reduction to..... 135.50

The general revision of rates will include similar reductions in upper berths between places in Kansas and many places not mentioned in the complaint. This general revision will also reduce 14 lower berth rates between places in Kansas and places outside of Kansas which are mentioned in the complaint, although no reduction in lower-berth rates is asked for.

STATE OF INDIANA.

The following statement shows the present rates between points complained of by the complainant and the rates which will apply for upper and lower berths between the same places in the general revision of rates which the Pullman Company proposes:

Between—	Miles.	Present lower and upper berth rates.	Proposed rates.			
			Lower berth.		Upper berth.	
			The Pullman Co.	State of Indiana.	The Pullman Co.	State of Indiana.
.....	22	\$1.50	\$1.50	.....	\$1.25	\$0.75
.....	188	1.50	1.50	.....	1.25	.75
.....	147	1.50	1.50	.....	1.25	.75
.....	126	1.50	1.50	.....	1.25	.75
.....	26	1.50	1.50	.....	1.25	.75
.....	108	1.50	1.50	.....	1.25	1.00
.....	174	1.50	1.50	.....	1.25	.75
.....	222	2.00	2.00	.....	1.00	1.00
.....	158	1.50	1.50	.....	1.25	.75
.....	188	2.00	1.75	.....	1.40	1.00
.....	187	2.00	1.75	.....	1.40	1.00
.....	177	1.50	1.50	.....	1.25	.75
.....	115	1.50	1.50	.....	1.25	.75
.....	92	1.50	1.50	.....	1.25	.75
.....	221	2.00	2.00	.....	1.00	1.00
.....	181	2.00	1.75	.....	1.40	1.00
.....	162	1.50	1.50	.....	1.25	.75
.....	267	2.00	2.00	.....	1.00	1.00
.....	160	1.50	1.50	.....	1.25	.75
.....	122	1.50	1.50	.....	1.25	.75
.....	168	1.50	1.50	.....	1.25	.75
.....	177	1.00	1.75	.....	1.40	1.00
.....	126	1.50	1.50	.....	1.25	.75
.....	117	1.50	1.50	.....	1.25	.75
.....	170	1.50	1.50	.....	1.25	.75
.....	60	1.50	1.50	.....	1.25	.75
.....	128	1.50	1.50	.....	1.25	.75
.....	181	1.50	1.50	.....	1.25	.75
.....	220	2.00	2.00	.....	1.00	1.00
.....	148	1.50	1.50	.....	1.25	.75
.....	102	1.50	1.50	.....	1.25	.75
.....	146	1.50	1.50	.....	1.25	.75
.....	180	2.00	1.75	.....	1.40	1.00
.....	134	1.50	1.50	.....	1.25	.75
.....	112	1.50	1.50	.....	1.25	.75
.....	104	1.50	1.50	.....	1.25	.75
.....	89	1.50	1.50	.....	1.25	.75
.....	60	1.50	1.50	.....	1.25	.75
.....	162	1.50	1.50	.....	1.25	.75
.....	148	1.50	1.50	.....	1.25	.75
.....	286	2.00	2.00	.....	1.00	1.00
.....	270	2.00	2.00	.....	1.00	1.00
.....	178	1.50	1.50	.....	1.25	.75
.....	258	2.00	2.00	.....	1.00	1.00
.....	217	2.00	1.75	.....	1.40	1.00
.....	208	2.00	2.00	.....	1.00	1.00
.....	126	1.50	1.50	.....	1.25	.75
.....	149	2.00	1.50	.....	1.25	1.00
.....	160	1.50	1.50	.....	1.25	.75
.....	124	1.50	1.50	.....	1.25	.75
.....	160	1.50	1.50	.....	1.25	.75
.....	109	1.50	1.50	.....	1.25	.75
.....	181	2.00	1.75	.....	1.40	1.00
.....	155	1.50	1.50	.....	1.25	.75
.....	188	1.50	1.50	.....	1.25	.75
.....	168	1.50	1.50	.....	1.25	.75
.....	70	1.50	1.50	.....	1.25	.75
.....	204	2.00	1.75	.....	1.40	1.00
.....	177	1.50	1.50	.....	1.25	.75
.....	217	1.50	1.50	.....	1.25	.75
.....	164	1.50	1.50	.....	1.25	1.00
.....	182	2.00	2.00	.....	1.00	1.00

The Pullman Company filed with this table the following note:

The state of Indiana has filed complaint on 62 upper-berth rates. The accompanying table shows a reduction of each of said rates, as follows:

	25c.	40c.	50c.	60c.	75c.	\$1.00
Indiana asks .....	...	...	2	...	42	18
Pullman Company proposes	44	9	...	8	1	.....

The 62 present upper-berth rates, using each rate once, they amount to.... \$102.00
Indiana complaint is for reduction to..... 51.50
Adjustments made to equalize, make reduction to..... 81.85

The general revision of rates will include similar reductions in upper berths between places in Indiana and many places not mentioned in the complaint. This general revision will also reduce 9 lower-berth rates between places in Indiana and places outside of Indiana which are mentioned in the complaint, although no reduction in lower-berth rates is asked for.

STATE OF ARKANSAS.

The following statement shows the present rates between points complained of by the complainant and the rates which will apply to upper and lower berths between the same places in the general revision of rates which the Pullman Company proposes:

Between—	Miles.	Present lower and upper berth rates.	Proposed rates.			
			Lower berth.		Upper berth.	
			The Pullman Co.	State of Arkansas.	The Pullman Co.	State of Arkansas.
Smith and Dallas.....	267	\$2.00	\$2.00	.....	\$1.60	\$1.50
Hot Springs and Fort Worth.....	364	2.50	2.25	.....	1.80	1.50
Hot Springs and Dallas.....	330	2.50	2.25	.....	1.80	1.50
Smith and Oklahoma City ^a	247	(^a)	(^a)	.....	(^a)	1.50
Arkansas and Galveston.....	370	2.50	2.50	.....	2.00	1.50
Fort Rock and St. Louis.....	348	2.50	2.25	.....	1.80	1.50
Hot Springs and St. Louis.....	353	2.50	2.25	.....	1.80	1.50
Osborne and St. Louis.....	269	2.00	2.00	.....	1.60	1.50
Fort Rock and Fort Worth.....	391	3.00	2.50	.....	2.00	2.00
Fort Rock and Dallas.....	358	3.00	2.25	.....	1.80	2.00
Bluff and St. Louis.....	412	3.00	2.50	.....	2.00	2.00
Springs and St. Louis.....	402	3.00	2.50	.....	2.00	2.00
Fort Rock and Amarillo.....	628	4.00	4.00	.....	3.20	3.00
Bluff and Amarillo ^a	703	(^a)	(^a)	.....	(^a)	3.00
Springs and Amarillo.....	732	4.00	4.00	.....	3.20	3.00
Hot Springs and Chicago.....	643	4.00	4.00	.....	3.20	3.00
Springs and Chicago. { I. C. and C. of G. { C. & A. and I. M. ..	721 686	4.00	4.00	.....	3.20	3.00
Smith and Chicago.....	706	4.50	4.25	.....	3.40	3.25
Arkansas and Chicago.....	778	5.00	4.75	.....	3.80	3.50
Bluff and Kansas City ^a	563	(^a)	(^a)	.....	(^a)	2.75
Bluff and Memphis.....	155	1.50	1.50	.....	1.25	1.00
Arkansas and Fort Worth.....	246	2.00	2.00	.....	1.60	1.50
Arkansas and Dallas.....	213	2.00	2.00	.....	1.60	1.50
Springs and Oklahoma City.....	408	2.50	2.50	.....	2.00	1.75
Fort Rock and Chicago.....	656	3.50	3.50	.....	2.80	2.50
Bluff and Chicago ^a	695	.....	.....	.....	.....	2.50
Hot Springs and St. Louis.....	416	2.50	2.50	.....	2.00	2.50
Arkansas and St. Louis.....	494	3.50	3.00	.....	2.40	2.50
Arkansas and Kansas City.....	488	3.50	3.00	.....	2.40	2.50
Osborne and Fort Worth.....	512	4.00	3.25	.....	2.60	2.50
Osborne and Dallas.....	489	4.00	3.00	.....	2.40	2.50
Fort Rock and Galveston.....	515	3.50	3.50	.....	2.80	2.50
Hot Springs and Galveston.....	637	3.50	3.50	.....	2.80	2.50
Hot Springs and Amarillo ^a	521	.....	.....	.....	.....	2.50
Hot Springs and Kansas City.....	328	2.50	2.25	.....	1.80	1.75

^a No through service.

Between—	Miles.	Present lower and upper berth rates.	Proposed rates.			
			Lower berth.		Upper berth.	
			The Pull- man Co.	State of Arkansas.	The Pull- man Co.	State of Arkansas.
Jonesboro and Kansas City.....	420	\$2.50	\$2.50	.....	\$2.00	\$1.75
Fort Smith and Memphis.....	296	2.50	2.00	.....	1.60	1.75
Pine Bluff and Fort Worth.....	369	2.50	2.25	.....	1.80	1.75
Pine Bluff and Dallas.....	346	2.50	2.25	.....	1.80	1.75
Little Rock and Oklahoma City.....	354	2.50	2.25	.....	1.80	1.75
Little Rock and Kansas City.....	525	3.00	3.00	.....	2.40	2.00
Little Rock and Memphis.....	{ 133 } 149	2.00	2.00	.....	1.60	1.50
Texarkana and Memphis.....						
Hot Springs and Memphis.....	293	2.00	2.00	.....	1.60	1.50
Fort Smith and Fort Worth.....	193	2.00	2.00	.....	1.60	1.50
Pine Bluff and Oklahoma City ^a	301	2.00	2.00	.....	1.60	1.50
Pine Bluff and Galveston ^a	397	.....	.....	.....	.....	2.50
	522	.....	.....	.....	.....	2.75

^a No through service.

The Pullman Company filed with this table the following note:

The state of Arkansas has filed complaint on 40 upper-berth rates (exclusive of 7 shown where there are no through rates). The accompanying table shows a reduction of each of said rates, as follows:

	25c.	40c.	50c.	60c.	70c.	75c.	80c.	90c.
Arkansas asks.....	1	....	9	....	....	7	....	....
Pullman Company proposes.....	1	8	4	1	11	....	4	1
	\$1.00	\$1.10	\$1.20	\$1.25	\$1.40	\$1.50	\$1.60	
Arkansas asks.....	19	.....	.....	1	.....	3	.....
Pullman Company proposes.....	3	3	2	.....	1	.....	1	

Of the 40 present upper-berth rates, using each rate once, they amount to... \$116.00
Arkansas complaint is for reduction to..... 81.50
Adjustments made to equalize, make reductions to..... 86.45

The general revision of rates will include similar reductions in upper berths between places in Arkansas and many places not mentioned in the complaint. This general revision will also reduce 19 lower-berth rates between places in Arkansas and places outside of Arkansas which are mentioned in the complaint, although no reduction in lower-berth rates is asked for.

CONCLUSIONS.

The reductions in lower berths which are herein proposed by the Pullman Company, not being involved in the complaints filed by the various states, will not be the subject of an order by the Commission; but an order will be made in these cases directing the Pullman Company to fix rates, on or before February 1, 1911, upon upper berths not exceeding 80 per cent of the rates applicable under the Pullman Company's tariffs upon lower berths whenever such lower-berth rate is \$1.75 or over, and in cases where the lower-berth rate is \$1.50 the upper-berth rate shall be fixed at a rate not to exceed \$1.25, and such rates shall be maintained for a period of not less than two years from said date.

No. 2441.
MEMPHIS FREIGHT BUREAU
v.
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

Submitted May 6, 1910. Decided December 12, 1910.

Rates on cottonseed from points on defendant's lines in Missouri, Arkansas, and Louisiana to Memphis found to be unreasonable, and also unduly discriminatory in their relation to rates from the same points to East St. Louis. Reasonable rates established.

T. K. Riddick for complainant.

S. H. West and *Roy F. Britton* for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The rates on cottonseed shipped to Memphis from points on the lines of the defendant in the states of Missouri, Arkansas, and Louisiana are here complained of as unreasonable and unjust in themselves, and as unduly discriminatory and unjustly prejudicial to the crushing mills at Memphis when compared more especially with the rates in effect from the same points of origin to East St. Louis. The defendant was understood on the hearing to have admitted that certain of these rates are out of line, but it denies the other material allegations of the complaint, and takes the position that the granting of the prayer of the petition would result in giving to Memphis an undue preference and advantage over East St. Louis and other milling points.

Memphis is substantially nearer to stations on the defendant's lines in Arkansas where cotton seed is produced, than is East St. Louis. Yet the rates to the latter point are so much lower that substantially all the seed not crushed by the local mills goes to East St. Louis, as we are told, thus practically closing that source of supply to the Memphis mills. Prior to 1903 the defendant's cottonseed rates to Memphis were satisfactory. They gave Memphis

a differential over East St. Louis ranging upward from 5 cents per 100 pounds. But during that year a crushing mill was established at East St. Louis and a new schedule was filed naming rates to that point from 40 to 60 per cent lower than the previous rates, while making no change in the rates to Memphis. Some of the new rates to East St. Louis seem to be actually lower than the rates from the same points to Memphis, notwithstanding the shorter mileage to the latter point; and the complainant alleges that all the new rates are relatively lower than the present rates to Memphis.

The following table shows the prior and present relation of rates as between Memphis and East St. Louis, from certain named points, and is said to be illustrative of the general rate adjustment:

Relation of rates between Memphis and East St. Louis.

From—	Distance to—		Rates prior to 1903.		Present rates.		Rates to Mem-phis sug-gested by peti-tioner.
	Valley Junction, Ill. (E. St. Louis).	Mem-phs Bridge Junction, Ark.	To East St. Louis.	To Mem-phs.	To East St. Louis.	To Mem-phs.	
MAIN LINE.							
Malden, Mo.....	Miles. 189	Miles. 172	Cents. 25	Cents. 20	Cents. 10	Cents. 29	Cents. 8
Paragould, Ark.....	235	126	25	11½	12½	11½	8
Waldenburg, Ark.....	281	80	25	14	14	14	8
Morelocks, Ark.....	317	70	25	13	14	13	8
Stuttgart, Ark.....	364	117	25	14	15	14	9
STUTTGART BRANCH.							
Gillette, Ark.....	399	152	.....	.....	16	34	10
LITTLE ROCK BRANCH.							
Little Rock, Ark.....	432	185	25	15	15	15	9
MAIN LINE.							
Pine Bluff, Ark.....	399	152	25	12½	15	12½	9
Lewisville, Ark... ..	521	274	37	17	17½	17	11½
SHREVEPORT BRANCH.							
Alden Bridge, La.....	563	316	37	20	17½	20	11½
MAIN LINE.							
Milton, Ark.....	544	297	37	17	17½	17	11½

The complainant asserts that the more favorable rates to East St. Louis were made effective and kept in force in such a way that although the Memphis mills knew that some unfair conditions prevailed they were not able to discover the lower rates until several years after they had been established, although numerous efforts were made to ascertain why the Memphis mills could get no seed supplies from the points in question. Information as to the lower rates to East St. Louis, which the complainant refers to as secret rates, was finally obtained from the files of the Commission.

The case is presented upon a voluminous record which contains, in addition to the testimony, a number of exhibits; and the issue is thoroughly discussed and argued on the briefs. While the record has been carefully examined there is much in it that we need not dwell upon here. A brief statement of the facts is all that is essential to a proper disposition of the matter.

It appears that the defendant's rates on cottonseed to Memphis are generally higher than the rates for equal distances over other lines reaching Memphis from the west. It also appears that other lines maintain a substantial differential in favor of Memphis as against East St. Louis. We are also impressed by the fact that on commodities generally the defendant's rates to Memphis and East St. Louis are so adjusted as to give due recognition to the shorter haul to Memphis. One of the exhibits filed on behalf of the complainant, the details of which we have not verified, indicates an average differential of 7.6 cents per 100 pounds in favor of Memphis on class-A shipments and on certain commodities. Other exhibits and other facts appearing of record tend to confirm the complainant's contention that the defendant's higher rates on cottonseed to Memphis than to East St. Louis are not in harmony with the general relation of its rates as between those two points. The defendant explains the existing relation of rates on cottonseed by saying that the rates to Memphis and those to East St. Louis are established on two different theories; the former upon the Arkansas commission's rate to the junction point, plus the rate of the connecting line into Memphis; while the latter is based upon the Arkansas commission's rate to mill points plus the rate on the product to East St. Louis.

The main point brought to our attention by the defendant is that there is a substantial difference between the service rendered by the defendant in hauling cottonseed to East St. Louis and the service rendered in hauling that commodity into Memphis. It appears that the bridge crossing the Mississippi River at Thebes is owned by the defendant and other carriers, all contributing ratably toward its maintenance. While it was said at the hearing that the defendant owned its own line into East St. Louis, we observe from the reports filed with the Commission, and which are presumably correct, that from Thebes to East St. Louis the defendant operates over the rails of the St. Louis, Iron Mountain & Southern, and under some arrangement with that company likewise contributes toward the expense of maintaining the line between these two points. It also appears that the defendant does not reach Memphis over its own rails, and that from Fair Oaks, in the state of Arkansas, to Memphis, a distance of some 60 miles, its traffic is hauled into Memphis in trains of the Iron Mountain and over the latter's tracks under a contract which

allows the Iron Mountain an arbitrary rate of 3 cents per 100 pounds for the service. To this must also be added a bridge toll, which in the case of cottonseed amounts to $1\frac{1}{2}$ cents per 100 pounds. The defendant's contention is that the haul into Memphis is a two-line movement, whereas it has a one-line movement into East St. Louis, and that a relatively lower rate to the latter point is therefore permissible.

Taking all these matters into consideration, we have arrived at the conclusion that the relation of rates on cottonseed as between the two points is unduly discriminatory against Memphis, and also that the rates are excessive in and of themselves and ought to be reduced. We find that for the future the rate from and including Malden, in the state of Missouri, and from stations south thereof, to and including Jonesboro, in the state of Arkansas, should not exceed $12\frac{1}{2}$ cents per 100 pounds; from Jonesboro to and including Clarendon the rate should not exceed $11\frac{1}{2}$ cents; from Ulm, Parham, and Stuttgart the rate should not exceed $12\frac{1}{2}$ cents; from points on the Stuttgart branch the rate should not exceed $13\frac{1}{2}$ cents; from and including Goldman to and including Altheimer the rate should not exceed $12\frac{1}{2}$ cents; from points on the Little Rock branch the rate should not exceed $13\frac{1}{2}$ cents; from Rob Roy to and including Clio the rate should not exceed $12\frac{1}{2}$ cents; from Clio to and including Finn the rate should not exceed $13\frac{1}{2}$ cents; from Finn to and including Frostville, on the Shreveport branch, the rate should not exceed 14 cents; from the other stations on the Shreveport branch the rate should not exceed 15 cents; from main line points south of Lewisville the rate should not exceed 14 cents.

As the Paragould & Southeastern Railway or the Pine Bluff & Arkansas River Railway are not parties defendant herein, their rates on cottonseed to Memphis can not be regarded as being in issue before us.

An order will be issued in accordance with the above findings.

20 I. C. C. Rep.

No. 2043.

EAST ST. LOUIS COTTON OIL COMPANY

v.

LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted April 8, 1910. Decided December 12, 1910.

complaint questions reasonableness of rates on cottonseed in carloads from points mainly in Oklahoma, Arkansas, Mississippi, Tennessee, and Missouri to East St. Louis, Ill., and also alleges unjust discrimination in the relationship of such rates as compared with rates on cottonseed products from said points of origin at which cottonseed-oil mills are located to East St. Louis and to points beyond, principally in Illinois, Indiana, Ohio, Michigan, and Wisconsin; *Held*, That the rates applicable to each kind of traffic necessarily must be made with reference to the facts, circumstances, and conditions governing the production, transportation, and marketing of the respective products, and that from the record in this case the Commission is unable to find that the charges on cottonseed products afford a strict measure for the reasonableness of the rate on cotton seed; *Held, further*, That in the light of the facts, circumstances, and conditions affecting the particular traffic, the Commission does not find the rates here involved to be unreasonable, unjust, or unduly discriminatory.

The general rule is that manufactured products bear higher rates of transportation than does raw material, and it is founded in reason, because ordinarily there is a substantial difference between the value of the one and that of the other, and frequently there is a greater degree of risk incident to the transportation and care of the manufactured product than of the raw material.

This general rule is not universal, and is departed from in some instances because the reasons for the distinction are lacking, and in other cases because of counter-vailing commercial and market conditions and considerations.

Respecting contention of complainant concerning its disadvantage because of distance, and that of interveners as to allowing mills in the cotton territory to crush the seed; *Held*, That it is not the duty of this Commission to equalize the profit-and-loss results of competing operations in different localities by overcoming natural and commercial conditions with rate adjustments.

S. H. Cowan for complainant.

Martin L. Clardy, James C. Jeffery, Henry G. Herbel, and B. M. Hippen for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

20 I. C. C. Rep.

James Hagerman and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company.

M. L. Bell, *Wallace T. Hughes*, and *E. B. Peirce* for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and St. Louis, Kansas City & Colorado Railroad Company.

Fred H. Wood and *E. B. Peirce* for St. Louis & San Francisco Railroad Company; St. Louis, San Francisco & Texas Railway Company; and Chicago & Eastern Illinois Railroad Company.

A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company; Kansas Southwestern Railway Company; and Leavenworth & Topeka Railway Company.

Harry P. Warner for Fort Smith & Western Railroad Company.

J. L. Howell for Terminal Railroad Association of St. Louis.

Sidney F. Andrews and *R. Walton Moore* for Illinois Central Railroad Company; Mobile & Ohio Railroad Company; Southern Railway Company; and Yazoo & Mississippi Valley Railroad Company.

Flynn, Ames & Chambers for Oklahoma Cottonseed Crushers' Association, intervener.

Herbert J. Campbell, *A. R. Bragg*, and *J. C. Jeffery* for Little Rock Merchants' Freight Bureau, intervener.

H. W. B. Glover for Southern Cotton Oil Company, intervener.

C. B. Bee for Oklahoma Corporation Commission, intervener.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This case, filed January 19, 1909, presents the question of the reasonableness of rates on cottonseed in carloads from points of origin on defendants' lines mainly in Oklahoma, Arkansas, Mississippi, Tennessee, and Missouri to East St. Louis, Ill., and the question of unjust discrimination in the relationship of such rates as compared with rates on cottonseed products from points in the same cotton-producing territory at which cottonseed-oil mills are located to East St. Louis and to points beyond, principally in Illinois, Indiana, Ohio, Michigan, and Wisconsin. Complainant owns and operates a cottonseed-oil mill at East St. Louis, purchasing its seed from points of origin referred to, and contends that the said adjustment of rates therefrom to East St. Louis and destinations beyond on cottonseed and cottonseed products is such as to unduly prejudice its business at East St. Louis and to prefer cottonseed-oil mills at and near the points of origin of the cottonseed. Much stress is laid upon an example of comparison embodied in petition, as follows:

A ton of cottonseed shipped from Oklahoma City to East St. Louis, 546 miles, yields a revenue of \$4.70, which is 8.6 mills per ton-mile. When it is manufactured into

the product at East St. Louis and shipped on to Peoria, Ill., for example, the result is as follows:

800 pounds meal, local rate 5 cents, equals.....	\$0. 40
730 pounds hulls, local rate 5 cents, equals.....	. 365
300 pounds oil, local rate 8½ cents, equals.....	. 255
40 pounds linters, local rate 15 cents, equals.....	. 06
<hr/> 1,870	<hr/> 1. 08

Total revenue, cottonseed and product, \$5.78; 705 miles, equals 8.1 mills per ton-mile.

If the same product moves direct to Peoria from Oklahoma City, the result is as follows:

800 pounds meal, rate 23½ cents, equals.....	\$1. 88
730 pounds hulls, rate 21 cents, equals.....	1. 53
300 pounds oil, rate 32½ cents, equals.....	. 97
40 pounds linters, rate 60 cents, equals.....	. 24
<hr/> 1,870	<hr/> 4. 62

Equivalent to 6.56 mills per ton-mile.

It is urged that this example is fairly illustrative of the comparative results of shipments to and from other places covered by the petition. Complainant also contends that the rate on the raw material should not be higher than that on the finished product or, to be more definite, that cottonseed should not take a higher rate than that applied to cottonseed meal from the points of origin in the cotton-growing section to East St. Louis. It asks reparation on various enumerated shipments moving under the adjustment of rates attacked as unreasonable and discriminatory. Defendants deny the unreasonableness alleged.

Subsequent to the filing of this complaint there were filed with the Commission four separate petitions of intervention by the Oklahoma Cotton Seed Crushers' Association and by 32 other corporations operating cottonseed-oil mills in the state of Oklahoma; by the Little Rock Merchants' Freight Bureau, and by various owners and operators of cottonseed-oil mills in the state of Arkansas. Both the Oklahoma and Arkansas interveners contend that carriers already afford to East St. Louis and points in other states at which competing cottonseed-oil mills are located rates on cottonseed out of Oklahoma and Arkansas which permit their competitors to purchase seed in the two states named at prices that the local operators can not afford to meet and then successfully compete in consuming markets on the products, at the existing rates thereon.

From the tariffs on file here we are unable to verify a rate of 23.5 cents in effect at the time of this complaint which would result in the charge of \$4.70 on cottonseed from Oklahoma City to East St. Louis. The correct rate was 25 cents, which is still in effect, and which would result in a charge of \$5 per ton between the points

named. We are also unable to check the rates shown from East St. Louis to Peoria, which doubtless were proportions allowed the lines beyond East St. Louis in the subdivision of the through rate. The rates shown from Oklahoma City to Peoria were correct on date of complaint but subsequently were increased and are still in effect as follows:

	Cents per 100 pounds.
Cottonseed meal.....	26½
Cottonseed hulls.....	26½
Cottonseed oil.....	32½
Cottonseed linters.....	71

These rates applied to the products of a ton of cottonseed, as above cited, would result as follows:

800 pounds meal, rate 26½ cents, equals.....	\$2. 12
730 pounds hulls, rate 26½ cents, equals.....	1. 934
300 pounds oil, rate 32½ cents, equals.....	. 975
40 pounds linters, rate 71 cents, equals.....	. 284
<hr/> 1, 870	<hr/> 5. 313

One of the principal contentions in a somewhat similar case now before us, *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, 20 I. C. C. Rep., 33, is that rates on cottonseed from Arkansas points to Memphis, Tenn., as compared with rates on the same commodity from the same points of origin in Arkansas to East St. Louis, practically prohibit the movement of said seed from Arkansas points to Memphis.

The record discloses that at the time of the location of the East St. Louis Cotton Oil Mill at East St. Louis, Ill., in 1903, the present rate adjustment on cottonseed was in existence; that the price of the seed has advanced from \$7.50 in 1898 to \$28 per ton in 1909; also that the average cost to the manufacturers of cottonseed products in the cotton-growing section in moving seed from the various cotton gins by rail, wagon, or otherwise to the mills, distances averaging about 50 miles, is about \$1.50. Cottonseed moves almost entirely during the months of October, November, and December, a small quantity moving in September and January, and it is handled with more dispatch, on account of the likelihood of damage by overheating, than is necessary to move the products which are transported with practically no susceptibility to damage throughout the year, and during the short period in which the seed must move it appears that carriers experience difficulty in furnishing adequate equipment, especially so when the seed moves greater distances than from local gin points to near-by mills.

The general rule is that manufactured products bear higher rates of transportation than does raw material, and it is founded in reason, because ordinarily there is a substantial difference between the

value of the one and that of the other, and frequently there is a greater degree of risk incident to the transportation and care of the manufactured product than of the raw material. The practice, however, is not universal, and is departed from in some instances because the reasons for the distinction are lacking, and in other cases because of countervailing commercial and market conditions and considerations. Within the last-named class of exceptions to the general rule perhaps would fall the case of grain and grain products, which are for the most part carried at the same rate. A frequent exception to the first-named class is in cases where from a single raw material like cottonseed there are several resulting distinct products and by-products, widely differing in value, weight, bulk, and the uses to which they are put. The general practice referred to more nearly universally applies with respect to the primary or principal product or products than to the secondary products or by-products from the same raw material. The primary purpose of crushing cottonseed is to extract the oil, which is by far the most valuable product, and the rates thereon are universally higher than on the cottonseed from which it is produced. Cottonseed meal and cake are approximately of the same value as the seed, and are generally carried at the same or only slightly lower rates, whereas the lower grade by-products, hulls, and linters, are transported at still lower rates.

Much has been said respecting the alleged disadvantage under which complainant's plant at East St. Louis operates by reason of its greater distance from the points of origin of the seed, but it appears to us that this disadvantage is counterbalanced by the fact that its mill is located at East St. Louis near the large consuming markets east and north of that point; that the seed can be purchased in the cotton-growing section and moved to its mill at East St. Louis, be there manufactured into the products and, because of this close proximity to the points of consumption, the said products can be shipped on to the consuming points with more facility, more rapidity, and more satisfaction than from mills at more distant points. It also has an advantage over the mill operators in the cotton-growing section by reason of more railroad facilities from East St. Louis and cheaper fuel with which to operate its mill. The interveners in this case also contend that, inasmuch as cottonseed is one of the small number of raw materials produced in the south for which adequate manufacturing facilities have been established, the adjustment of rates ought to be such as to enable the mills in that territory to crush them. Respecting both of these contentions it is not the duty of this Commission to equalize the profit and loss results of competing operations in different localities by overcoming natural and commercial conditions with rate adjustments.

The rates applicable to each kind of traffic necessarily must be made with reference to the facts, circumstances, and conditions governing the production, transportation, and marketing of the respective products, and in this case we are unable to find that the charges on cottonseed products afford a strict measure for the reasonableness of the rate on cottonseed.

It is the duty of the Commission to see that rates are just and reasonable to all parties interested, including not only the manufacturers of the seed at the respective points but the carriers and the consumers. With the exception perhaps of the so-called long-and-short-haul provision of the act, the law has not undertaken to prescribe for the guidance of the Commission any measure of reasonableness and justness of the rates involved and we are therefore left to the facts, circumstances, and conditions affecting the particular traffic. In the light of these we do not find the rates here involved to be unreasonable, unjust, or unduly discriminatory.

The complaint therefore will be dismissed.

20 I. C. C. Rep.

No. 2469.

ANADARKO COTTON OIL COMPANY ET AL.

v.

CHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted April 8, 1910. Decided December 12, 1910.

Rate on cottonseed oil from certain Oklahoma points to Galveston, Tex., of $31\frac{1}{2}$ cents found unreasonable to the extent that it exceeds $27\frac{1}{2}$ cents.

Rate on cottonseed oil from Ardmore, Durant, Madill, and Tishomingo, Okla., to Galveston, Tex., found unreasonable to the extent that it exceeds $22\frac{1}{2}$ cents.

Respecting the refining-in-transit privilege at Dallas, Greenville, Sherman, and Fort Worth, Tex., on oil for export through Galveston; *Held*, That the Commission does not endeavor to establish or extend transit privileges in the absence of discrimination, proof of which in this case is wanting; but in a recent tariff the privilege here asked for apparently has been granted.

Present rates on cottonseed oil from Tishomingo, Ardmore, Durant, Madill, and Roff, Okla., to certain points in Texas found unreasonable to the extent that they exceed the rates declared reasonable in the report.

Blanket rate on cottonseed oil from all the remaining Oklahoma points involved to certain Texas points found unreasonable to the extent that it exceeds the rate named in the report.

Carriers allowed the option either to reduce the group rates on cottonseed oil substantially in accordance with suggestions made in the report, retaining the grouping, or to comply with the suggestions of changing the grouping to some extent.

Defendants allowed ninety days within which to present a scheme of rate adjustment in substantial conformity with this report.

A rate reasonable in view of the circumstances and conditions when it is established may, in course of time, become unreasonable by virtue of changed circumstances and conditions. It is manifestly impracticable for the carriers or the Commission in such a case to determine at what exact time in the gradual process of changes the rate becomes unreasonable.

Neither does it seem that the bona fide action of the carriers in the necessary exercise of their judgment within reasonable limits should always be at their peril of liability for reparation for the difference between rates initiated upon their judgment and later changed upon the judgment of the Commission. Therefore, the awarding of reparation by no means necessarily follows the reduction of a rate, whether by the voluntary action of the carriers or by order of the Commission.

10. Whatever may be the nature of the facts, circumstances, and conditions appearing in a particular case where reparation is involved, whether on account of excessive rates or by reason of unjust discrimination, there must be that degree of certainty and satisfactory conviction in the mind and judgment of the Commission as would be deemed necessary under the well-established principles of law as a basis for a judgment in court. Applying these principles to this case the report herein should not be regarded as a basis for reparation.

Flynn, Ames & Chambers for complainants.

Martin L. Clardy, James C. Jeffery, Henry G. Herbel, and B. M. Flippin for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

James Hagerman and Joseph M. Bryson for Missouri, Kansas & Texas Railway Company.

M. L. Bell, Wallace T. Hughes, and E. B. Peirce for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and St. Louis, Kansas City & Colorado Railroad Company.

Fred H. Wood and E. B. Peirce for St. Louis & San Francisco Railroad Company; St. Louis, San Francisco & Texas Railway Company; and Chicago & Eastern Illinois Railroad Company.

A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company; Kansas Southwestern Railway Company; and Leavenworth & Topeka Railway Company.

Harry P. Warner for Fort Smith & Western Railroad Company.

J. L. Howell for Terminal Railroad Association of St. Louis.

Sidney F. Andrews and R. Walton Moore for Illinois Central Railroad Company; Mobile & Ohio Railroad Company; Southern Railway Company; and Yazoo & Mississippi Valley Railroad Company.

Herbert J. Campbell, A. R. Bragg, and J. C. Jeffery for Little Rock Merchants' Freight Bureau, intervener.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This complaint, brought by 32 corporations owning and operating plants for the manufacture of cottonseed products in Oklahoma, filed May 12, 1909, attacks as unjust, unreasonable, and unduly discriminatory defendants' rates on cottonseed products, including oil, meal, cake, hulls, and linters, from points at which said plants are located to practically all consuming territory, and compares said rates with rates on these commodities from points in other states at which similar plants of competitors are located to the same destinations. Complainants indicate the reductions they seek and ask for the establishment of rules governing refining in transit at Greenville, Sherman, Dallas, and Fort Worth, Tex., on cottonseed

originating at points in Oklahoma, on the Chicago, Rock Island & Pacific, the Missouri, Kansas & Texas, the St. Louis & San Francisco, the Atchison, Topeka & Santa Fe, the Fort Smith & Western, Oklahoma Central, Wichita Valley, and Midland Valley railroads, and the reduction of back-haul charges on refined cottonseed-oil products.

A petition of intervention was filed by the Little Rock Merchants' Freight Bureau, alleging in effect that to whatever consuming territory defendants' rates on cottonseed products from Oklahoma points are reduced, said consuming points will be absolutely closed to the cottonseed-oil mills in Arkansas because of the keen competition now existing between the Arkansas and Oklahoma mills under the present adjustment of rates.

Defendants deny generally that the rates attacked are unreasonable, unjust, or unduly discriminatory.

Complainants submit as evidence of alleged discrimination in favor of competitive points comparative statements of mileage and per-ton-mile earnings and insist that the rates from Oklahoma points are not justified by the difference in mileage. This would afford a more potent argument if the carriers serving the Oklahoma mills were the only ones also serving mills of competitors, but many different carriers serve them from different territories of origin.

Cincinnati, Ohio, appears fairly illustrative of the points east of the complaining territory. The rates on cottonseed oil to Cincinnati from the following-named points are:

From—	Distance.	Rate.	Revenue per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Memphis, Tenn.	494	17	6.88
Little Rock, Ark.	627	21	6.69
Fort Smith, Ark.	757	25	6.60
Eastern Oklahoma points, averaging.	800	28	7
Central and western Oklahoma points, averaging.	900	40	8.89

It will be noted that contrary to the ordinary practice or rule the rates or earnings per ton-mile are somewhat greater for the longer distances, that is, from points in Oklahoma to Cincinnati, than for the shorter distances from points of origin in Arkansas and eastern Oklahoma, but it is well known that rates in the territory adjacent to the Mississippi River are influenced by water competition, *Memphis Cotton Oil Co. v. I. C. R. R. Co.*, 17 I. C. C. Rep., 313, and as the distance from the river increases the influence of this competition diminishes.

With reference to the alleged excessive rates to the west, as compared with rates principally from Arkansas points, complainants claim that rates from the following places are fairly illustrative of

their contention, viz., Little Rock and Fort Smith as points of origin, and Kansas City, Mo., and Denver, Colo., as points of destination. To Kansas City the distance from Little Rock is 483 miles, and from Fort Smith, 328. The average distance from Eufaula, Muskogee, Sallisaw, and Wagoner, in eastern Oklahoma, to Kansas City, is about 266 miles. The average distance from the remaining points in central and western Oklahoma to Kansas City is about 417 miles. To Denver Colo., the distance from Little Rock is 1,097 miles and from Fort Smith, 877. The average distance from the eastern Oklahoma points to Denver is about 936 miles, and from the central and western Oklahoma points, about 778 miles.

A blanket rate of 17 cents applies on cottonseed meal and cake from all of these points of origin to Kansas City, and 30 cents to Denver. The per-ton-mile revenue to Kansas City from Little Rock is 7.04 mills and from Fort Smith 1.037 cents, whereas upon the average mileage from all the Oklahoma points the per-ton-mile revenue is 8.54 mills. To Denver from Little Rock the per-ton-mile revenue is 5.46; from Fort Smith, 6.84; and upon the average mileage from all Oklahoma points the per-ton-mile revenue is about 7.49.

A somewhat similar comparison to the above with respect to the rates applicable to these and the other products here involved except oil shows about the same relative adjustment. We do not find upon the facts appearing that the rates independently considered or their relative adjustment applicable to these products other than oil are unjust or unreasonable.

The rates on cottonseed oil to Kansas City are as follows:

From—	Distance.	Rate.	Revenue per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Memphis, Tenn.....	484	20	0.827
Little Rock, Ark.....	483	20	0.828
Fort Smith, Ark.....	328	16	0.976
Wagoner, Okla.....	238	16	1.345
Sallisaw, Okla.....	291	16	1.099
Muskogee, Okla.....	254	20	1.575

From the remaining points in Oklahoma the average distance is about 415 miles and a blanket rate of 25 cents is in effect, which makes an average per-ton-mile yield of about 1.202 cents. The distances in this group vary considerably. For instance, from Frederick to Kansas City is 529 miles, making the per-ton-mile revenue 9.45 mills, whereas the distance from Cushing is about 280 miles, yielding a per-ton-mile revenue of 1.786 cents.

Resulting from the fact that most of the Oklahoma points of origin are grouped under a common rate on cottonseed oil moving to Kansas City, the earnings per ton-mile vary considerably on account of the

ferences in distances. The reasons for the establishment of this up at a common rate, regardless of differences in distances do not ear, because the reasonableness of this grouping has not been challenged and the grouping has not been attacked. Only the rate from group is called in question. While the rate from some of the more ant points in the group, if separately considered, would be regarded easonable, it is our conclusion that the rate as applied from all its in the group is upon the whole somewhat excessive and that e points to which the 25-cent rate now applies are to be continued group carrying a blanket rate, the said rate therefrom to Kansas should not exceed $20\frac{1}{2}$ cents per 100 pounds, and that the rate 0 cents from Muskogee to Kansas City, if this point is not to be uded in the group referred to, should be reduced not to exceed : cents, and that the rate of 16 cents now applying from Sallisaw Wagoner should not exceed in the case of Sallisaw 14.2 cents, in the case of Wagoner 11.6 cents. Or in the case of the 25-cent ket rate, if the carriers prefer to discontinue the grouping there- er, the rate to Kansas City from the nearer points, Cushing, for ance, a distance of 280 miles, should not exceed 14 cents, and for longer distance, from Frederick, for instance, 523 miles, the rate uld not exceed 24.8 cents. The rates from the other points of ying distances to be graded accordingly.

he distance to Galveston from Fort Smith, the latter stated by plainants as an illustrative point in Arkansas, is 562 miles, and rate on cottonseed oil between these points is $26\frac{1}{2}$ cents, which ds a per-ton-mile revenue of 9.34 mills. To Galveston from aula, Muskogee, Sallisaw, and Wagoner, an average distance of ut 541 miles, the present rate of $26\frac{1}{2}$ cents on oil makes an average ld of about 9.70 mills per ton-mile, and from Ardmore, Durant, dill, and Tishomingo, an average distance of about 421 miles, the sent rate of $26\frac{1}{2}$ cents yields a per-ton-mile revenue of about 1.2 ts. The average distance from the remaining Oklahoma points Galveston is about 562 miles, and the rate applicable thereto is : cents, making the average per-ton-mile yield about 1.145 cents. We find that on cottonseed oil the rate from Oklahoma points w charged $31\frac{1}{2}$ cents is excessive and unreasonable to the extent at it exceeds $27\frac{1}{2}$ cents, and that the rate from Ardmore, Durant, dill, and Tishomingo is excessive and unreasonable to the extent at it exceeds $22\frac{1}{2}$ cents.

Respecting the refining-in-transit privilege at Dallas, Greenville, erman, and Fort Worth, Tex., on oil for export through Galveston d "back-haul charges" on the refined cottonseed-oil products, it is oper to say that the Commission does not endeavor to establish extend transit privileges in the absence of discrimination, proof of ouch in this case is wanting, and regarding the back-haul charges

20 I. C. C. Rep.

on the refined products no evidence whatever was introduced as justifying any reduction in the present charges. However, in F. A. Leland's Tariff, I. C. C. 747, effective September 1, 1910, the privileges here asked for apparently have been granted under the following provisions:

Shipments of crude cottonseed oil may be stopped for refining purposes at any intermediate refining point when originating at points in Oklahoma, with additional charge of one (1) cent per 100 pounds, with a minimum of \$5 per car for such stops; outbound movement to be refined cottonseed oil and foots or soap stock only.

The time for stop-over shall be limited to 90 days. * * *

There appears to be no through rates established from Arkansas points on cottonseed oil to Dallas, Greenville, Sherman, and Fort Worth, Tex.

The mileage, rates, and per-ton-mile revenue from five of the Oklahoma points are as follows:

From—	To—	Distance.	Rate.	Per-ton-mile yield.
		Miles.	Cents.	Cents.
Tishomingo.....	Dallas.....	163	16	1.963
Do.....	Greenville.....	142	16	2.254
Do.....	Sherman.....	99	16	3.232
Do.....	Fort Worth.....	138	16	2.319
Ardmore.....	Sherman.....	66	19	5.757
Durant.....	do.....	30	11	7.333
Madill.....	do.....	41	11	5.366
Roff.....	do.....	81	22	5.432

We find these rates to be unreasonable and unjust to the extent that they exceed the following:

From—	To—	Rate per 100 pounds.
		Cents.
Tishomingo.....	Dallas.....	14½
Do.....	Greenville.....	12½
Do.....	Sherman.....	10
Do.....	Fort Worth.....	12½
Ardmore.....	Sherman.....	7.1
Durant.....	do.....	7.1
Madill.....	do.....	7.1
Roff.....	do.....	7.1

There is a blanket rate from all of the remaining Oklahoma points involved to these four Texas points of 25 cents per 100 pounds, the distance ranging from 71 miles to 330 miles, yielding per-ton-mile revenue of from 1.515 to 7.042 cents. The average distance is about 223 miles, which results in an average per-ton-mile revenue of about 2.3 cents, which we find to be unreasonable to the extent that it exceeds a rate of 16½ cents. However, if defendant carriers prefer to not retain these points of origin in a group under one rate, the said points may have applied thereto graded rates, ranging from 7.1

ts applicable to the shorter distances—Durant, for instance, miles from Greenville—which will yield a per-ton-mile revenue of out 2 cents, and 16½ cents, applicable to the longer distances—nton, for instance, 330 miles from Greenville—which will yield a -ton-mile revenue of about 1 cent.

While the groupings above stated and referred to are not combined of, we are satisfied that the rates from many of the pointsolved are unjust and unreasonable as indicated. However, we inclined to leave the option to the carriers, either to reduce the up rates substantially in accordance with our suggestions, retain the grouping, or to comply with the suggestions of changing the uping to some extent. Therefore we have concluded not to make definite order here, but will give the carriers a reasonable time in ich to readjust these rates by one method or the other, in substantial accordance with our conclusions. The defendants will be allowed ety days from the date hereof within which to present to the Commission for its consideration as a compliance with these suggestions, scheme of rate adjustment in substantial conformity therewith. e case will be held for that period, after the expiration of which will make such order as may be deemed appropriate.

Complainants conclude their petition as follows:

omplainants further pray that the Commission will after ascertaining and declaring just and reasonable rate on cottonseed products retain this cause for further hearing permit each of the complainants to offer evidence showing to the Commission amount of freight which the said defendants have charged each of said complainants in excess of a just and reasonable charge, and that upon said showing that Commission will award reparation to each of said complainants for such unjust unreasonable excess of charge.

An award of the Commission in reparation of damages resulting from a violation of the act to regulate commerce is not enforceable such, but in a suit in court for such damages the findings and order of the Commission are prima facie evidence in support thereof. follows that the Commission is not justified in awarding damages any case except on a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another. The standard of the law by which the validity of any rate as affected by its amount is determined, is not more definite than that must be reasonable and just. The test of reasonableness can be applied only by reference to and upon consideration of all pertinent facts, circumstances, and conditions affecting the rate in effect at any particular time. In the nature of the case there can be no rule or process whereby the definite absolute maximum limit of reasonableness in the amount of a rate can be fixed with the certainty of a demonstration.

The law imposes upon the carriers the duty of initiating their rates, under the injunction of the statute that they shall be reasonable and just. In the performance of this duty by the carriers they must exercise judgment and discretion by a like resort to existing facts, circumstances, and conditions in the first instance, just as the Commission must later do when the rates are brought in question before it. The carriers are presumed to act in good faith in their exercise of discretion and judgment under this somewhat indefinite standard of the statute in its practical application, and therefore rates established by the carriers can not be condemned except upon investigation and full hearing. A rate reasonable in view of the circumstances and conditions when it is established may in course of time become unreasonable by virtue of changed circumstances and conditions. It is manifestly impracticable for the carriers or the Commission in such a case to determine at what exact time in the gradual process of changes the rate becomes unreasonable.

In the matter before us it appears that some of the rates between many of the points involved were formerly higher than at present, and the situation here fairly illustrates what has taken place elsewhere in reductions from time to time in rates as the density of traffic increases with that of population and business development in a new and growing community. It would be a manifestly harsh rule that would assume a rate now condemned as unreasonable to have been so for a period of two years, or that of the statute of limitations, in the past as a basis for the payment of money by the carriers on past shipments, especially when no complaint had been made against them within that period. Certain it is that the law establishes no such presumption, nor is it a necessary sequence that the rate has been unreasonable for any period in the past. Neither does it seem that the bona fide action of the carriers in the necessary exercise of their judgment within reasonable limits should always be at their peril of liability for reparation for the difference between rates initiated upon their judgment and later changed upon the judgment of the Commission. Therefore the awarding of reparation by no means necessarily follows the reduction of a rate, whether by the voluntary action of the carriers or by order of the Commission. When a rate is advanced and the increased rate is condemned by the amount of the advance, a much more satisfactory basis for an award of reparation is afforded than in a case like the one before us, where so far as changes have occurred they have been, at least for the most part, reductions in a territory where changes in conditions have taken place which contribute in greater or less degree to a present showing of unreasonableness in existing rates. Again our records show in many instances that rates have long remained in the tariffs, some-

s without frequent occasion on the part of shippers to use them, when traffic has been offered to which they were applied they not only been challenged by the shipper as unreasonable, but needed to be so by the carriers and clearly so found by the Commission by comparison with other rates and by other suitable tests, orders for reparation have followed.

The reference to particular circumstances and conditions in the cases of cases just mentioned is not an intimation that awards of reparation are to be confined to such cases. It is intended only to make clearer our view that whatever may be the nature of the facts, circumstances, and conditions appearing in a particular case where reparation is involved, whether on account of excessive rates or by reason of unjust discrimination, there must be that degree of certainty and satisfactory conviction in the mind and judgment of the Commission as would be deemed necessary under the well-established principles of law as a basis for a judgment in court. Applying these principles to the case before us, it remains to be said only that our report herein will not be regarded as a basis for reparation.

I. C. C. Rep.

No. 1136.

JAMES H. MINDS AND JULIA A. MATZ, TRADING AS THE
BULAH COAL COMPANY,

v.

PENNSYLVANIA RAILROAD COMPANY.

No. 1137.

JAMES H. MINDS, SURVIVING AND LIQUIDATING PARTNER
OF JAMES H. MINDS AND WILLIAM J. MATZ, LATELY
TRADING AS THE BULAH COAL COMPANY,

v.

SAME.

Submitted February 1, 1909. Decided December 5, 1910.

Upon complaint that the defendant's system of rating mines and distributing its coal-car equipment is discriminatory, it is so found, and *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, 19 I. C. C. Rep., 356, and the other cases in that group of cases, are cited and reaffirmed. The question of damages is reserved for further argument.

H. W. Moore, George M. Roads, John H. Minds, William H. Patterson, David L. Krebs, and James H. Gleason for complainants.

Francis I. Gowen, George V. Massey, and Murray & O'Laughlin for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

On or about April 12, 1904, a member of the copartnership that filed the first of these two complaints died, and his place in the firm was taken by his widow. This change in interest is the explanation of the two complaints; the first one prays for damages in the sum of \$80,174.60, alleged to have been sustained prior to that date, and the second demands an award in the sum of \$75,226.99 for damages alleged to have been suffered after that date. The claims in each case are based upon the allegation that the defendant was guilty of unjust discriminations against the complainants in the distribution of its coal-car equipment during the period covered by the complaints and also failed to furnish the coal-car equipment to the complainants.

supply of cars. We are also asked to require the defendant hereafter to furnish the complainants, in the daily distribution, with their just proportion of its available coal-car equipment, that proportion to be ascertained by the physical output capacity of the mines served by the defendant, without regard to their so-called commercial capacity.

This question in all of its aspects was fully considered in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, 19 I. C. C. Rep., 356; *Jacoby & Co. v. P. R. R. Co.*, 19 I. C. C. Rep., 386; and the other cases there referred to and which were disposed of at the same time. It will not be necessary therefore again to consider it here. It will suffice to say that we find upon this record that the defendant, during the period covered by these actions, was guilty of an undue and unjust discrimination against the complainants, by reason of the enforcement of the rules then in effect for the distribution of its available coal cars among the mining operations that it served; and an order in that regard will be entered herein substantially similar to the orders entered in the cases above mentioned. As those orders require the defendant to put in effect for the future a non-discriminatory system of car distribution no further order in that regard need be entered here.

In addition to the damages alleged to have been suffered by the complainants by reason of the defendant's rules of distribution, there are one or two other matters that must be mentioned. The mine of these complainants, known as Webster No. 4, is in the vicinity of the operations involved in *Jacoby & Co. v. P. R. R. Co.*, *supra*, and is connected by a switch track with the defendant's Moshannon branch. It produces a superior quality of soft coal that is used for steaming and forging purposes and also as a domestic coal; it is in good demand and brings a high price in the markets of consumption. The tipple, mining machinery, and the general development of the mine were designed for a shipping capacity of from 1,000 to 1,200 tons of coal per working day. Its capacity, as rated by the defendant in 1906, was 16 thirty-five ton cars per day, or 560 tons, indicating a maximum monthly output of 14,000 tons. At the same time the defendant rated Eureka Mine No. 7, about half a mile distant on the same mineral and surface estates and belonging to the Berwynd-White Coal Mining Company, at 14 cars per day. Although defendant gave the two mines about the same rated capacity, the latter mine seems to have received not only a more substantial and regular supply, but a larger number of cars each month. On that point the defense interposed is that the petitioners received their fair proportion of the entire number of cars distributed on the Tyrone division, and therefore have no ground for complaint. A similar

defense was made in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, *supra*, but we there held that under the law a shipper has the right not only to receive its fair and full proportion and use of a carrier's equipment and facilities, but may protest against the giving to a competitor of a supply of cars in excess of his fair and just proportion. We repeat that principle here. It is one of great importance in coal-mining operations, as all will agree who have looked into such matters. One of the evils lying at the root of the trouble is that the mine that has a larger and more constant supply of cars may not only be operated at less cost, but, what is equally if not more important, such a mine is able to attract miners from the other mines because of the assurance it gives of a more constant opportunity to earn a daily wage.

The greater regularity of the car supply made available to the Berwynd-White Coal Mining Company operations, as is pointed out in *Jacoby & Co. v. P. R. R. Co.*, *supra*, is partly explained by the fact that that company not only owned a large supply of private cars, but had railway-fuel contracts which, under the rules for distribution then in effect, resulted in giving it a large and regular number of assigned cars. This discrimination, as was pointed out in the cases referred to, resulted from the rules then in effect and need not be further considered here. In this connection it may be well to say that the complainants predicate a part of their damages upon the fact that in 1902 the defendant sold 1,000 of its system coal cars to the Berwynd-White Coal Mining Company, 500 to the Keystone Coal & Coke Company, and 700 to the Ellsworth Coal Company. The defendant meets this claim by asserting that if these cars had been retained as system cars they would have added to the car supply of the complainants during the time in question only a fraction of a car per day. We have not verified this assertion, but any damage resulting from the sale by the defendant of a portion of its own equipment to other coal companies is substantially covered by our finding that the proper practice in the distribution of all available cars was to count all assigned cars against the equipment of the mine receiving them.

The complainants characterize as a special discrimination against their mine the fact, as is alleged, that they repeatedly had great difficulty in getting the trainmen and agents of the defendants to place on their siding and at their tipple the cars that had been assigned for delivery to them. It is said that the cars were frequently left at the foot of the siding and that the complainants had to pull them into place with mules. It is also said that the cars were frequently delivered so late in the morning as not to leave them available during that day, and that cars delivered late in the day were not infrequently charged against that day's quota of cars and against the quota of the

following day as well. On these matters, however, we do not find a sufficient basis in the record for affirmative conclusions or anything to indicate that the complainants, in those respects, were put by the defendants on any less favorable basis than their competitors.

Another fact which is made a ground for a claim of damages is that in 1903 the complainants asked the privilege of purchasing certain cars for use in transporting coal from their mine, but were informed by the defendant that they were discouraging the use of new individual car contracts. Later the complainants negotiated for the purchase of 100 wooden gondola cars, which at that time were in actual use in the transportation of coal by another mining company over the lines of the defendant; but the defendant declined to permit their use by the complainant on the ground that the cars were not up to standard. The negotiations were therefore not carried to a conclusion, but apparently the cars were still in use, when these complaints were filed, for the transportation of coal by the defendant for other shippers. Later there was some controversy with respect to the use of 25 new steel cars purchased by the complainants for their own use, but which were kept temporarily out of service, pending some dispute between the complainants and the defendant with respect to the terms of the contract covering their use as private cars.

While there are also other things shown of record which put the defendant on explanation and properly subject it to just criticism, the only point upon which the record affords a sufficient basis for affirmative findings grows out of the rules and system then in effect for the distribution of available equipment among the various coal mining operations. We have condemned that system in the cases heretofore alluded to and found it to be unduly and unjustly discriminatory, and we have so found here. But as was the case with those proceedings we desire further light on the amount of the damages thus sustained. The latter question will therefore be set for further argument at the time when the same question is argued in the group of cases heretofore mentioned. The special reasons for entering upon the consideration of the question of damages in these cases have been explained in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, 19 I. C. C. Rep., 356.

An order will be entered in accordance with these conclusions.

PROUTY, *Commissioner*, dissenting: Without restating my views in this proceeding I desire it to be understood that my dissent in the case last cited is equally applicable here. In that dissent Commissioner Clements joined. It is the desire also of Commissioner Lane to be understood as entertaining in this proceeding the same views respecting the lawful basis for rating mines for the distribution of coal cars that are expressed in his dissenting opinion in the case last mentioned.

No. 2946.

IMPERIAL WHEEL COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted December 1, 1910. Decided December 5, 1910.

Upon complaint that the defendant refuses to make a connection with the petitioner's spur track leading to its plant and to operate the track except upon condition that the petitioner shall first release it from liability for loss and damage by fire on the premises caused by sparks and coals from the defendant's locomotives while on the spur track; *Held*, That if the defendant goes beyond its common-law duty as a carrier and undertakes to operate a spur track, doing this for the convenience of the shipper, and in this case without additional charge, such a requirement on its part is not unreasonable. It has no control over the complainant's premises and can not police them or take other steps to avoid the danger of fire. Under such circumstances it may protect itself against the hazard of fire and consequent loss and damage to the petitioner's property by attaching reasonable conditions to its undertaking to operate the spur track.

W. T. Young and Alex. H. Rowell for complainant.

Martin L. Clardy, James C. Jeffery, and H. G. Herbel for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The factory of the complainant at Pine Bluff, in the state of Arkansas, is connected by a spur track with the main line of the St. Louis Southwestern Railway Company, but a substantial volume of its inbound and outbound traffic moves over the line of the defendant and it is therefore required to pay the St. Louis Southwestern Railway a charge of \$2.50 per car for switching cars from the rails of the defendant to its plant. These charges in the past have amounted to about \$1,200 a year. In order to avoid this expense, the complainant, at a cost of \$800, has constructed a spur track over its own and adjoining lands, for a distance of some 800 feet, for the purpose of directly connecting its plant with the line of the defendant, thus enabling the defendant to spot cars at the complainant's factory

without a switching movement over the other line. And this service the defendant proposes to perform for the complainant without additional charge.

The negotiations between the parties for connecting the switch track with the defendant's rails have proceeded to a point that removes from our consideration all questions as to the safety of the proposed connection, the amount of tonnage that the complainant will furnish, and all other related questions. The only point upon which the parties to the controversy have not been able to arrive at an agreement is with respect to the conditions under which the spur track shall be operated by the defendant after the connection shall have been made.

It seems that the defendant has what it calls a standard form of industrial switch-track agreement or contract. This document, as prepared and tendered to the complainant, purports to release and indemnify the defendant from all liability and claim for loss or damage by fire caused by its locomotives while on the premises and from all liability or claim for damages for injury to the complainant's property by the defendant while operating locomotives and cars upon the spur track. It also requires the industry to keep the spur track in a good and safe condition for operation and to indemnify and save the defendant harmless from and against any loss or damage arising out of the injury of property or persons occasioned directly or indirectly by the failure of the complainant to keep the spur track in such condition.

The complainant has refused to enter into this contract and is now before us praying for an order requiring the defendant to make the switch connection and operate the track without contractual restrictions of that kind. Upon the argument, counsel for the complainant expressly eliminated from our consideration all provisions in the contract relating to damages arising out of personal injuries on the premises of the complainant occasioned through the act of the defendant. We are therefore left to consider the single question whether a carrier, as a condition precedent to its undertaking to make a switch connection and to operate a spur track leading to an industry, may require the industry to indemnify it from liability and claim for loss and damage by fire caused by the sparks or burning coals from its locomotive on the spur track. The record shows that the insurance companies that have placed fire policies upon the plant and property of the complainant will demand an additional annual premium of \$170 if the complainant enters into any contract that releases the defendant from liability for loss and damage of that character. If thus deprived by the complainant of the right, by way of subrogation, to bring an action for damages against the defendant for a fire loss

occasioned by it in that manner, the insurance companies insist upon that amount of extra compensation. And the complainant thinks that it ought not to be required to be at such an additional expense for fire protection.

We were advised upon the argument that the spur track on the complainant's premises runs between lumber piles placed sometimes so close to the track as to have knocked the defendant's employees from the cars; that there are shavings and sawdust and other inflammable material on the premises; and that there is an extra hazard in operating its locomotives and cars upon a spur track through such surroundings, for many fires are occasioned by sparks and burning coals from locomotives. The extent of this extra hazard of fire from the presence on the premises of the defendant's locomotives is indicated, to some extent at least, by the additional premium demanded by the insurance companies. The complainant indeed admits the fact of the extra hazard, but contends that the defendant, although it proposes, as will be remembered, to operate the spur track free of charge, should bear the burden of the hazard, and therefore ought not to force the complainant to enter into any such contract as has been described.

We see nothing unreasonable in the defendant's demand for indemnity against losses by fire so occasioned, and it is our understanding that it is more or less of a general practice on the part of carriers to make conditions of that nature before undertaking to operate a private spur track leading to an industry. We have said in *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C. Rep., 237, and in other cases, that it is no part of the duty of a carrier, either at common law or under the act, to spot cars at warehouses or factories, or to do more than to set them on the spur track and off their own right of way. If it undertakes to go beyond that duty and to spot cars at a warehouse or factory of an industry, with or without additional compensation, we see no reason why it may not predicate its undertaking upon the condition that it shall not be liable to the industry for fire losses of this nature. The premises here belong to the complainant and the defendant comes upon them for the convenience of the complainant and to serve it without charge and in excess of its legal obligation to serve it. The defendant has no control over the complainant's plant and premises or the use that is made of the property. It can not police the premises or otherwise take steps to avoid the dangers of fire. Being invited on the premises by the complainant and to serve the complainant outside of its common law duty as a carrier, we see no reasons why it may not insist upon reasonable conditions to protect it against the hazard of loss arising out of its undertaking.

Under section 1, if the connection desired "is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and the maintenance of the same," the requirements of the act are apparently met, so far as the shipper's right to demand a connection is concerned. But the operation of a private side track by a carrier is a different matter from the operation by it of the connection. If the prerequisite statutory conditions exist the connection must be made whether desired by the carrier or not. But in undertaking a service on a spur track off its own right of way the carrier may attach reasonable conditions to the undertaking. And the conditions respecting its liability for fire on the premises of the complainant, which the defendant insists upon here, do not seem to us to be unreasonable.

The complaint must be dismissed and it will be so ordered.

No. 3261.

WILLIAM K. NOBLE

v.

DETROIT & TOLEDO SHORE LINE RAILROAD COMPANY
ET AL.

Submitted October 5, 1910. Decided December 5, 1910.

Complainant asks reparation on one carload of coiled elm hoops from Newport, Mich., to New York City, based on incorrect weight. Defendants' weighmaster's certificate shows a weight of 66,000 pounds, but complainant contends that the weight did not exceed 56,000 pounds, based upon estimated weight of 475 pounds per 1,000 hoops; *Held*, That the secondary evidence introduced by complainant was not sufficient to establish that this shipment was not properly and accurately scaled.

R. B. Coapstick for complainant.

Geo. W. Kretzinger for Grand Trunk Railway Company and Detroit & Toledo Shore Line Railroad Company.

Fred S. Ross for Detroit & Toledo Shore Line Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Complainant is engaged in the manufacture and sale of slack-barrel cooperage stock at Fort Wayne, Ind., and in a complaint filed May 3, 1910, asks reparation on one carload of coiled elm hoops shipped from Newport, Mich., to New York City, on September 21, 1909. There is no question as to the rate, the complaint being directed solely to

other carloads of the same size of hoops shipped from Newport on various dates averaged only 436.4 pounds per 1,000. Defendants, on the other hand, submit a Grand Trunk weighmaster's certificate showing a weight of 66,000 pounds, together with evidence that on July 13, 1909, the track scales upon inspection were found to be accurate.

The weight of past shipments suggests probably a greater element of uncertainty than most questions of fact we are called upon to determine. The shipment itself is gone, and ordinarily a reweighing is therefore impracticable or impossible. Actual scaling of necessity ordinarily should govern, and positive evidence of defective mechanism, clerical error in recording, or other inaccuracy should clearly appear before there can be substituted an estimated basis for a finding that prima facie must be accepted as correct. To hold otherwise, in addition to affording greater opportunity for discriminatory practices, would be to sanction a system of weights as variable as the commodities themselves or the views of different shippers based on their individual observation and experience. This, of course, to say the least, could lead only to confusion. The secondary evidence introduced by complainant we do not deem sufficient to establish that this shipment was not properly and accurately scaled; and the complaint will therefore be dismissed.

20 L. C. C. Rep.

No. 3357.

WILLIAM K. NOBLE

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.

Submitted October 5, 1910. Decided December 5, 1910.

Reparation awarded for an unreasonable rate and weight charged for the transportation of one carload of coiled elm hoops from Bell City, Mo., to Jacksonville, Fla.

R. B. Coapstick for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Complainant is a manufacturer of and dealer in slack-barrel cooperage stock at Fort Wayne, Ind., and in a complaint filed June 25, 1910, asks for reparation on one carload of coiled elm hoops shipped from Bell City, Mo., to Jacksonville, Fla., on October 11, 1907. The complaint is based both upon the rate and weight assessed, it being alleged that the Cairo combination of 36 cents was erroneous and that a through rate of 31 cents, constructed 8 cents to Cairo and 23 cents beyond should have applied. Defendants admit a straight overcharge of 3 cents per 100 pounds, which they are willing to refund upon the basis of the proper weight, and as complainant questions only the correctness of the through charge, which an examination of our tariffs shows to have been 33 cents, divided 12 cents to Memphis and 21 cents beyond, the only question remaining goes to the weight of the shipment.

The car was weighed on the track scales at Dexter, Mo., with the following result: Gross 56,500 pounds, tare 31,400, net 25,100. At Jacksonville it was reweighed by the Southern Weighing and Inspection Bureau, which reported a gross weight of 61,000 pounds, tare 31,400, net 29,600. This difference of 4,500 pounds in the net weight is now the basis of claim. There is nothing to show affirmatively that either

of these track scales was inaccurate, or whether the discrepancy was the result of carelessness in recording the weight at Dexter or Jacksonville. Complainant relies chiefly upon an estimated weight and a comparison of similar shipments from Bell City, which it is alleged averaged lower per 1,000 hoops than the weight claimed on this car. There are also in evidence what purport to be two reports of the Southern Weighing and Inspection Bureau on this car, one dated November 8, 1907, showing gross weight 61,000 pounds, tare 21,400, and net 39,600; the other, dated November 6, 1908, showing gross weight 61,000 pounds, tare 38,400, net 22,600. In the first of these reports the weight greatly exceeds and in the other falls below the 29,600 pounds upon which freight charges were assessed.

A reasonable estimate or approximation, based upon the available facts, marks the limit of endeavor in dealing with the weight of past shipments, and while the scale weights ordinarily should govern, as we have recently held in the case of *Noble v. D. & T. S. L. R. R. Co.*, 20 I. C. C. Rep., 60, a variation in separate scalings of a particular shipment necessarily points to error. In the case cited, *supra*, we declined to accept an estimate or comparison to supplant the scale weight, but here we have in addition a conflict in actual scalings. Apparently there is no reason why the Jacksonville weight should be accepted over that obtained at Dexter, assuming, as we must upon this record, that both scales were in good working order. Under these circumstances we must be aided by the other facts of record, and applying that suggestion we conclude that charges should be assessed on the Dexter weight. We, therefore, find that the complainant is entitled to reparation in the sum of \$19.29, with interest from January 1, 1908.

An order for reparation will be issued.

20 I. C. C. Rep.

No. 3205.

NATIONAL REFRIGERATOR & BUTCHER SUPPLY
COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted June 30, 1910. Decided November 7, 1910.

1. Reparation denied on less-than-carload shipment of sausage casings from Milwaukee, Wis., to Memphis, Tenn.; but awarded on less-than-carload shipments of warehouse scales from Northville, Mich., to Memphis, Tenn., and on less-than-carload shipment of hardware from Cleveland, Ohio, to Memphis, Tenn.
2. Carriers ought promptly to refund plain overcharges, without putting shippers to the necessity of appealing to governmental authority for an award. The practice of some carriers of withholding as long as possible moneys to which they are not entitled condemned.

G. M. Stephen for complainant.

R. Walton Moore for Illinois Central Railroad Company and Pere Marquette Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint covers several less-than-carload shipments of various articles made by the complainant over different lines of carriers from various places to Memphis, Tenn.

On July 30, 1908, the complainant shipped one barrel of sausage casings, weighing 430 pounds, from Milwaukee, Wis., to Memphis, Tenn., by water in connection with the Barry Transportation Company, now the Chicago, Racine & Milwaukee Line, and the Illinois Central Railroad, upon which there was charged and collected the amount of \$2.54, based upon a rate of 59 cents per 100 pounds. This rate was the third class rate which was applied on sausage casings in kegs or barrels. The complainant seeks to have a commodity rate of 31 cents applied on packing-house products (which include sausage casings, pickled, canned, or smoked). The complainant was unable to furnish testimony as to whether or not the casings were pickled, canned, or smoked, and in so far as this part of the complaint is concerned it is dismissed.

On February 26, 1909, the complainant shipped six boxes of warehouse scales, weighing 520 pounds, from Northville, Mich., to Memphis, Tenn., over the lines of the Pere Marquette and the Illinois Central railroads, upon which there was charged and collected the

amount of \$4.29. Again, on May 5, 1909, it shipped five boxes of warehouse scales, weighing 375 pounds, from Northville, Mich., to Memphis, Tenn., over the same carriers, upon which there was charged and collected the amount of \$3.11. These charges were based upon a rate of 82.5 cents per 100 pounds, but the defendants admit that there was an overcharge and that the lawfully published rate was 70 cents per 100 pounds; and offer to make reparation upon that basis. Reparation is awarded in the amount of \$1.12, with interest thereon from May 5, 1909.

On March 20, 1908, the complainant shipped one box of hardware, weighing 220 pounds, from Cleveland, Ohio, to Memphis, Tenn., over the lines of the Baltimore & Ohio, the Baltimore & Ohio Southwestern, and the Illinois Central railroads, upon which there was charged and collected the amount of \$2.44, based upon a rate of \$1.09 per 100 pounds. But the lawfully published rate, as admitted by the defendants, was 70 cents per 100 pounds, and reparation is awarded in the amount of 88 cents, with interest thereon from March 20, 1908.

Complaints of the character herein considered should never be brought before this Commission. There should be no necessity for appealing to governmental authority to award damages for plain overcharges. It is the plain duty of the carriers to collect no more than the published rate; to do otherwise is a crime for which indictment will lie and for which there is serious punishment provided in the law against both the carrier and its agent. When there is a contest between the shipper and carrier as to the lawful rate applicable, arising out of an obscure tariff, there may properly be appeal to this Commission to give construction to the schedules. But there is but one count of such character involved herein. The others are based upon admitted deviations from the tariff rates. If by inadvertence the wrong rate had been applied, the carrier should have hastened, upon the application of the shipper, to remedy its mistake, and this no more for its own protection against prosecution under the law than out of a desire to do justice to its patrons. It is not too strong a statement of the fact to say that certain carriers seem at times willfully bent upon withholding for as long a period as may be possible moneys to which they are not entitled. The Commission has a mass of correspondence carrying such complaints. The law expressly makes

act more than the lawful rate, and the
its duty henceforward to enforce this
ases where the carrier appears willfully
f an illegal amount or refuses to make
its attention being called to its improper

conformity to these findings.

No. 2928.
INDEPENDENT SUPPLY COMPANY
v.
CUMBERLAND & PENNSYLVANIA RAILROAD COMPANY
ET AL.

Submitted September 26, 1910. Decided December 5, 1910.

Complainant seeks reparation on four carloads of blacksmith coal shipped from West Virginia points to Los Angeles, Cal., on the ground that the shipments were misrouted; *Held*, That as the shipments were routed in accordance with specific instructions, the fact that one of the defendants advised the routing can not be the basis on which to order reparation. *Poor Grain Co. v. C., B. & Q. R. R. Co.*, 12 I. C. C. Rep., 418, 469, cited and followed.

Charles A. Shurtleff for complainant.

No appearances for defendants.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complaining corporation, located at Napa, Cal., was in 1907, among other things, engaged in selling blacksmith coal. In complaint filed formally October 30, 1909, informally July 3, 1908, it alleges that in 1907 it shipped four carloads of blacksmith coal from West Virginia points to Los Angeles, Cal., on which it was charged at the rate of 75 cents per 100 pounds. It contends that the rate was unjust and unreasonable, and that the shipments were misrouted. The prayer is for reparation in the sum of \$652.80, the difference between charges collected and what would have been the total charges at rate of 52½ cents per 100 pounds.

The routing of three of the cars was via Baltimore & Ohio Railroad, care Wabash Railroad at Defiance, Ohio, care Missouri Pacific at Kansas City, care Denver & Rio Grande at Pueblo, and care San Pedro, Los Angeles & Salt Lake Railroad to Los Angeles. The remaining car was routed in care Missouri Pacific Railroad at St. Louis, care Denver & Rio Grande at Pueblo, care San Pedro, Los Angeles & Salt Lake Railroad at Salt Lake City. Shipments, routing, and collection of charges are admitted.

It appears that the vendor of the coal was requested by the vendee to route it by the Gould and Salt Lake lines, and after consultation with the Chicago office of the Wabash Railroad was advised to route

via Defiance, Ohio. The coal was sold at \$13 a ton; the freight charges \$15 per ton.

On the dates these cars moved the rate via the route over which they moved from all eastern mines to Los Angeles was 75 cents per 100 pounds. At the same time the same tariff containing the 75-cent rate provided rate of 52½ cents per 100 pounds applicable via various routes, for instance, "via Baltimore & Ohio via Chicago; via Burlington system or Chicago, Rock Island & Pacific via Denver, Colo., in connection with Union Pacific or Colorado & Southern, Atchison, Topeka & Santa Fe, Colorado Midland and Denver & Rio Grande via Ogden, Utah, and Southern Pacific system;" also via Baltimore & Ohio via Chicago, in connection with San Pedro, Los Angeles & Salt Lake via Provo or Salt Lake City. Other routes were also open at the 52½-cent rate. This joint rate was canceled April 1, 1908. The present rates are, to Chicago, \$2.05; to Mississippi River, \$2.50 per ton; and from Chicago and Mississippi River to Los Angeles, 42 cents per 100 pounds, making the present combinations, on Chicago, \$10.45; on Mississippi River, \$10.90. The rates to Chicago and Mississippi River which were in effect when shipments moved provided routing to points on Wabash Railroad, including East Hannibal, via South Chicago. Therefore, neither at the time of the movement nor when joint rate was canceled did the combination apply via Defiance.

The shipments were routed in accordance with specific instructions and if it be a fact that the Wabash Railroad advised the routing, that can not be the basis on which to order reparation. *Poor Grain Co. v. C., B. & Q. R. R. Co.*, 12 I. C. C. Rep., 418, 469.

The complainant strongly emphasizes the fact that the coal was sold at \$13 per ton and that the rate was \$15 per ton, when it expected to pay \$10.50, and relies upon the \$10.50-per-ton rate being in effect via other lines, and the reduction of the \$15 rate after the shipments moved as demonstrating the unreasonableness of the rate charged. But the loss could have been avoided if the shipments had been routed via Baltimore & Ohio and Chicago. The 75-cent rate had been in effect since November 5, 1904, and was not canceled until January 1, 1909. The cancellation of joint rate of 52½ cents did not make combination rates applicable via the route over which these shipments moved, and the lowering of 75-cent rate which has been in effect a number of years, very nearly two years after the shipment, does not carry with it a presumption that the higher rate was unreasonable.

This complaint was filed, answered, and heard on the issue of misrouting rather than the assessment of a rate unreasonable in and of itself.

On the whole record, we are unable to find the rate unreasonable or any of the defendants guilty of misrouting. It follows the complaint must be dismissed.

No. 2257 (AMENDMENT No. 1).
O'BRIEN COMMERCIAL COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted September 26, 1910. Decided December 5, 1910.

1. Complainant asks reparation on a shipment of furniture and framed wall looking-glasses, shipped in one car, from Rockford, Ill., to San Francisco, Cal. Charges were collected on the furniture on the minimum weight and on the looking-glasses at the actual weight, whereas complainant alleges that the charges should have been made on the actual weight of the entire shipment; *Held*, That as the looking-glasses were not to be used in connection with the furniture, the provisions in the tariffs were properly applied, and that the complaint should be dismissed.
2. No opinion is expressed as to whether the assignee of a claim for reparation can maintain proceedings in his own name before the Commission.

J. O. Bracken for complainant.

Nathan P. Bundy for Southern Pacific Company and Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Complainant, alleged to be the owner by right of purchase of the accounts of a corporation known as Kragen's, which on the date of the shipment involved was doing business as a department store in San Francisco, Cal., asks reparation in the sum of \$30.80 on a shipment of furniture and looking-glasses.

By stipulation agreement the facts are:

On October 7, 1907, there was shipped from Rockford, Ill., via lines of defendants, 10,000 pounds of new furniture and 6,600 pounds (22 boxes) of framed wall looking-glasses in Chicago & North Western car 9586. Charges were collected on the furniture on minimum weight of 12,000 pounds at the rate of \$2.20 per 100 pounds, \$264, and on the actual weight of the looking-glasses at the rate of \$2 per 100 pounds, \$132, a total of \$396. Complainant asks reparation in

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the difference between above charges and those which would result from the carload rate on furniture being assessed on the actual weight of the entire shipment, i. e., 16,600 pounds at \$2.20 per 100 pounds, \$365.20.

Transcontinental Tariff I. C. C. No. 375, in force on date of shipment, provided under commodity ratings not subject to Western Classification rate of \$2.20 per 100 pounds on furniture (new), all kinds, minimum weight 12,000 pounds, from Rockford to San Francisco. The same tariff named rate of \$2 per 100 pounds on looking-glasses (framed) not over three feet long, in less-than-carload lots, and \$1.25 per 100 pounds in carload lots, 24,000 pounds minimum. The looking-glasses were not a part of, or to be used in connection with, any of the other articles of furniture contained in the car.

The Western Classification effective when shipment moved provided:

Mirrors and looking-glasses, framed or unframed, and slabs (marble, slate, or stone), for furniture, boxed or crated, may be loaded in mixed carload with articles of furniture of which they form a part, at the carload rating for such furniture.

* * * * *

Glass forming an integral part of bureaus, dressing cases, hatracks, sideboards, and folding beds may be rated the same as the article of which it is a part.

The Classification provides that looking-glasses and mirrors of various kinds, not forming an integral part of the article of furniture shipped, shall be rated first class in less than carloads, and third class in carloads. References are made to the Western Classification solely because the stipulation so provided.

Transcontinental Freight Bureau Tariff, I. C. C. No. 375, contains rule that "No two or more articles having a carload rate shall be shipped in mixed carloads at the carload rate, unless so provided." No provision is made for shipping furniture and looking-glasses in mixed carloads.

The question is simply one of tariff interpretation. Plainly if complainant had had the requisite minimum weight of furniture it would not have complained. The Commission has held that the provision "furniture (new) all kinds" was broad enough to include show cases, but in that instance there was no commodity rating on show cases. Whether or not the looking-glasses were furniture they were separate and distinct articles for which a specific rate was provided, in the same manner as a specific rating was provided for marble, slate, or stone slabs. It is our view that rates were correctly applied. No opinion is expressed as to whether the assignee of a claim for reparation can maintain proceedings in his own name before the Commission.

The complaint will be dismissed.

20 I. C. C. Rep.

No. 3155.

WILLIAM K. NOBLE

v.

GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.

Submitted October 5, 1910. Decided December 5, 1910.

Complainant asks reparation on shipment of coiled elm hoops from Mount Clemens, Mich., via Norfolk, Va., to Ripplemead, Va., on a combination rate of 26 cents per 100 pounds. Subsequently a specific rate from Mount Clemens to Norfolk was published. Reparation is demanded on the basis of the resulting Ripplemead rate of 21½ cents; *Held*, That as the later tariffs could not be used until the Commission's tariff rules had been complied with, there is no basis for an order of reparation. Such order should be made upon affirmative evidence that the rate complained of is unreasonable or unjustly discriminatory, which does not appear in this case.

R. B. Coapstick for complainant.

Fred S. Ross and *Geo. W. Kretzinger* for defendants.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Complainant is engaged, at Fort Wayne, Ind., in the manufacture of slack-barrel cooperage stock, and in a complaint filed March 8, 1910, asks refund of \$15.75 on one carload of coiled elm hoops, weighing 33,600 pounds, shipped from Mount Clemens, Mich., to Ripplemead, Va., on June 5, 1909. A rate of 26 cents per 100 pounds was charged. The shipment moved via the Grand Trunk Western, Detroit & Toledo Shore Line, Hocking Valley, and Norfolk & Western railroads. At that time Norfolk & Western Eastbound Guide Book, I. C. C. No. A-797, provided to Ripplemead an arbitrary of 5 cents over Norfolk, but this basis was contingent upon shipments to Norfolk being made under joint through rates. This shipment moved to Norfolk on the Detroit combination. A specific rate from Mount Clemens to Norfolk was not published until September 10, 1909, when a rate of 16½ cents was made effective. (Supplement No. 5 to Grand Trunk Western, I. C. C. No. A-1194.) Reparation is demanded on the basis of the resulting Ripplemead rate of 21½ cents. There is no

ence as to the reasonableness of the rate charged, and complaint, briefly, is this: The Grand Trunk concurred in the Norfolk & Western Guide Book on June 1, 1909, and while Grand Trunk tariffs made no specific reference thereto until September 10, 1909, some three months after the shipment moved, it was certainly the intention, of the Grand Trunk at least, to use the Guide Book in fixing the Ripplemead rate. In other words, as the Norfolk & Western and Grand Trunk were parties to each other's respective tariffs, the rate claimed and specifically published on September 10, 1909, was intended to apply to this shipment on June 18.

It is obvious that the Norfolk & Western Guide Book, which merely fixed an arbitrary over Norfolk, was dependent for the Ripplemead upon the Grand Trunk's rate to Norfolk. These tariffs could not be used in conjunction, however, until the Commission's tariff rules in that respect had been complied with, regardless of the carriers' intention in framing the tariff. This condition was not met until September 10, 1909, prior to which date the legal rate from Mount Vernon to Ripplemead was 21½ cents, as charged. As stated, there is no evidence as to the reasonableness of this rate, and we have no basis, therefore, for an order of reparation, which must be based upon affirmative evidence that a rate complained of is unreasonable or unjustly discriminatory. The defendants do not agree that the effect of these tariffs prior to September 10, 1909, was defeated by legal defects and that shippers thereunder were on that account charged an unreasonable or unjustly discriminatory rate. In the absence of such an admission, to be considered with the other facts in record, or of affirmative evidence of unlawfulness in the rate, we must accept these tariffs as expressing the intent of the framers and prima facie reasonable.

The complaint will be dismissed.

L. C. C. Rep.

No. 3221.

WILLIAM K. NOBLE

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted October 5, 1910. Decided December 12, 1910.

Tariff of defendants should have provided that when a car of the capacity ordered by the shipper could not be promptly furnished and a car of a different capacity was furnished, such car might be used upon the basis of the minimum fixed for the car which was ordered. Such a rule should be established by defendants for the future. Reparation awarded because of failure of defendants to establish and apply the above rule.

R. B. Coapstick for complainant.

William C. Coleman for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Complainant is engaged at Fort Wayne, Ind., in the manufacture of slack-barrel cooperage stock, and on April 8, 1910, in a formal petition, demands reparation on a shipment of coiled elm hoops from Creston, Ohio, to Windsor Shades, Va. The shipment moved on June 18, 1909. On June 12, request was made of the Creston agent of the Baltimore & Ohio Railroad for a 34-foot car, and had this car been furnished, the shipment, which weighed 20,100 pounds, would have moved subject to a minimum of 24,000 pounds. Unable to secure the car ordered, and the shipment requiring prompt movement, complainant, on June 18, was compelled to use a 36-foot car, to which was applicable a 30,000-pound minimum. This 6,000 pounds difference is the basis of the present claim. A 34-foot car was received at Creston on June 19.

Creston is a small local station, and the Baltimore & Ohio has no physical connection with the other two lines serving that point. Defendants therefore suggest that cars of what they term exceptional sizes should be ordered at Creston further in advance than at junction or other more important points, and that a week or ten days would be reasonable notice. Complainant asserts, however, that

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three or four days should be ample. Rule 66 of the Commission's Tariff Circular 17-A provides:

The Commission believes it to be the duty of every carrier to incorporate in its tariff regulations a rule to the effect that when carrier can not promptly furnish car of capacity or dimensions desired by the shipper, and for its own convenience does provide a car of greater capacity or dimensions than that ordered, such car may be used on the basis of the minimum carload fixed in the tariffs for cars of the dimensions or capacity ordered by the shipper.

* * * * *

In all such cases the capacity of the car ordered, the date of such order, the number, initials, and capacity of the car furnished should be stated on the bill of lading and the carrier's waybill.

In case of controversy between shippers and carriers caused by absence of such rule from tariffs which provides graduated minima for cars of different sizes the Commission will regard such tariffs as prima facie unfair and unreasonable.

The Baltimore & Ohio tariffs did not contain a rule of the nature suggested, but such a rule, defendants assert, would not have applied to this shipment because complainant in using the larger car virtually withdrew his request—that is, the larger car was furnished for the shipper's convenience and not for the accommodation of the carrier. The record shows, however, that the Creston agent made daily requests for a 34-foot car up to the date of movement, and that complainant accepted the larger car only when informed that it was the only equipment available.

The real question, we think, is whether the car ordered was "promptly furnished" within the meaning of the rule quoted, and in our opinion it was not. It is true carriers can not in all instances secure equipment upon demand, and there is no question that every reasonable effort was made to promptly fill this order, but, as suggested in the rule quoted, if carriers can not promptly furnish the service offered in their tariffs, other arrangements as advantageous to the shipper should be provided for and published. It surely can not be contended that this shipment should have been delayed indefinitely; yet defendants admit that on June 18, the date of the movement, they had no assurance when a 34-foot car could be had. It is true complainant was advised that the 30,000-pound minimum would apply to the 36-foot car, but this information merely supplemented the tariffs themselves in effect at that time. We have also in mind that request for bill of lading and waybill notation that a smaller car had been ordered, although mailed on June 18, was not received until the car had left Creston, but even if this duty devolves wholly upon the shipper under Rule 66, which is not here decided, failure to conform to conditions of such a tariff rule need not be considered when the rule itself had no existence.

We are of the opinion that the tariff of the defendants should have provided that when a car of the capacity or dimensions ordered by

20 L. C. C. Rep.

the shipper could not be promptly furnished and a car of a different size or capacity was furnished, such car might be used upon the basis of the minimum fixed for the car which was ordered, and that such a rule should be established by the defendants for the future.

We are further of the opinion, and find, that in this case the complainant has been damaged by the failure of the defendants to establish and apply the above rule in the sum of \$9.60, which he is entitled to recover, with interest from July 1, 1909. An order will be issued accordingly.

20 I. C. C. Rep.

No. 3238.

FRANK W. BURTON

v.

UNADILLA VALLEY RAILWAY COMPANY ET AL.

Submitted October 5, 1910. Decided December 5, 1910.

Defendants ordered to establish a through route and joint rate of 16 cents per 100 pounds on lumber from West Edmeston, N. Y., to New Britain, Conn., unless a separately established rate between New Berlin, N. Y., and New Britain of 13 cents per 100 pounds is put in.

The per-ton-mile earnings of a small carrier, having only short hauls and light business, may properly exceed the per-ton-mile earnings of stronger lines participating in heavy traffic which moves for considerable distances.

David Ruslander for complainant.

Wirt Howe for Unadilla Valley Railway Company.

F. C. Anderson for New York, Ontario & Western Railway Company.

REPORT OF THE COMMISSION.

NE, *Commissioner*:

The complainant is a dealer in lumber, having his principal place business in the city of Buffalo, N. Y., and by this petition, filed on April 19, 1910, seeks the establishment of a through route and joint rate on lumber from West Edmeston, N. Y., to New Britain, Conn., over the lines of the Unadilla Valley Railway Company, the New York, Ontario & Western Railway Company, the Central New England Railway Company, and the New York, New Haven & Hartford Railroad Company. At the present time lumber moving between the points named is subject to a charge of $17\frac{1}{4}$ cents per 100 pounds, made up of a rate of $3\frac{1}{4}$ cents per 100 pounds applying over the line of the Unadilla Valley Railway Company from West Edmeston to New Berlin, the point of intersection with the New York, Ontario & Western Railway, and a rate of 14 cents per 100 pounds beyond. The petition alleges that this charge and each of the factors comprising it are excessive. The defendants deny that the rates attacked are unreasonable and resist the demand for the institution of a through route and joint rate.

At the hearing it was stated in behalf of the complainant that no objection could be made to the 14-cent rate applying from New Berlin, N. Y., to New Britain, Conn., but that the local rate of the Unadilla Valley Railway Company was believed to be unreasonable. There is in effect at the present time a rate of 15 cents per 100 pounds on lumber from Edmeston, a point reached by a branch of the New York, Ontario & Western Railway, joining the main line at New Berlin, N. Y., and it is the desire of the complainant to have West Edmeston placed upon the same basis.

The Unadilla Valley Railway Company is an independent line of railway, 20 miles in length. It has comparatively little rolling stock of its own, and whenever a car is ordered for the movement of lumber from West Edmeston it must be supplied by the New York, Ontario & Western Railway Company. When received by the Unadilla Valley Railway Company at New Berlin it is hauled, usually without load, to West Edmeston and there placed on a siding to be loaded. After loading is completed the car must be returned to the main line, hauled to New Berlin, and switched to the rails of the New York, Ontario & Western Railway Company. For this service the Unadilla Valley Railway Company receives $3\frac{1}{2}$ cents per 100 pounds, or a total revenue of \$11.05 per car based upon a minimum lading of 34,000 pounds.

A comparison between the earnings per ton-mile under the local rate of the Unadilla Valley Railway Company and the 14-cent rate effective via the New York, Ontario & Western Railway and its eastern connections from New Berlin to New Britain does not of itself prove that the rate of the Unadilla Valley Company is unreasonable. The per ton-mile earnings of a small carrier, having only short hauls and light business, may properly exceed the per ton-mile earnings of stronger lines participating in heavy traffic which moves for considerable distances. However, we are of opinion that the total charges on lumber from West Edmeston to New Britain are unreasonably high and that they should be reduced, and that a through route and joint rate should be established.

An order will accordingly be entered directing the Unadilla Valley Railway Company, New York, Ontario & Western Railway Company, Central New England Railway Company, and New York, New Haven, & Hartford Railroad Company to establish a through route and put into effect a joint rate of 16 cents per 100 pounds on lumber from West Edmeston, N. Y., to New Britain, Conn., unless they wish to put in a separately established rate between New Berlin and New Britain of 13 cents per 100 pounds.

No. 3387.

BARR CHEMICAL WORKS

v.

PHILADELPHIA & READING RAILWAY COMPANY ET AL.

Submitted October 17, 1910. Decided January 13, 1911.

1. The fifth class import rate of 27 cents per 100 pounds applied to the shipment of glue stock from Boston to Chicago found unreasonable to the extent that it exceeded the sixth class domestic rate of 24 cents per 100 pounds. The rate for the transportation of said article between such points should not exceed for the future the rate simultaneously in effect on "fleshings, tanner's, or slaughter-house offal, and wet hide trimmings, carload," between the same points. Reparation awarded.
2. On account of nonjoinder of certain carriers complaint as to shipment of glue stock from Philadelphia to Gowanda is dismissed without prejudice.

Albert Stebbins for complainant.

E. C. Martin for Grand Trunk Railway Company of Canada; Grand Trunk Western Railway Company; and Central Vermont Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Chairman*:

The complainant is the United States branch of a German chemical manufacturing concern styled the Barrer Chemische Fabrik, Barr, Elsass, having its principal American office in Milwaukee, Wis., and engaged in the business of importing and distributing glue stock and kindred low-grade products. The petition was filed on July 13, 1910, and contests the reasonableness of charges collected by defendants for the transportation of 75 bales of glue stock, weighing 31,576 pounds, from Philadelphia, Pa., to Gowanda, N. Y., and 173 bales of glue stock, weighing 38,350 pounds, from Boston, Mass., to Chicago, Ill. Both shipments were of foreign origin, the one from Philadelphia to Gowanda moving on July 22, 1909, on which charges of \$50.62 were collected, based on fifth class rate of 16 cents per 100 pounds. This rate is alleged to be unjust and unreasonable to the extent that it exceeds the sixth class rate of 13 cents per 100 pounds applying between the same points. The complainant alleges that the shipment moved via the lines of the Philadelphia & Reading Railway

Company and the Erie Railroad Company, but inasmuch as the carriers named are not connecting lines it is apparent that there is a defect of parties defendant.

The shipment from Boston to Chicago moved on May 5, 1910, via Boston & Maine Railroad, Central Vermont Railway, Grand Trunk Railway of Canada, and Grand Trunk Western Railway, on which charges of \$103.55 were collected, based on fifth class import rate of 27 cents per 100 pounds. The complainant alleges that this rate is unreasonable to the extent that it exceeds the sixth class import rate of 22 cents, and asks reparation upon that basis.

Glue stock is a commodity of very low grade, consisting mainly of the waste of hides. It is a refuse product of packing houses and tanneries and is of value only for the manufacture of glue and fertilizers. The percentage of glue is small, ranging from 10 to 15 per cent. The selling price does not exceed 1 to 3 cents per pound. The fifth class rating, which applies to glue stock under the Official Classification, covers likewise commodities of much higher grade, such as hides, which have a value ranging from 16 to 20 cents per pound, and glue, the finished product of glue stock. In view of the much lower value of glue stock, it is certainly anomalous to give it as high a rating as that applying on hides and glue. In apparent recognition of the impropriety of placing glue stock in the fifth class the carriers between Chicago and the Atlantic seaboard have by exceptions to the Official Classification established the sixth class rating on tannery fleshings, which are included in the general term "glue stock." The tariffs also show that by exception to Official Classification domestic sixth class applies on "fleshings, tanner's, or slaughterhouse offal, and wet hide trimmings, carload minimum 36,000 pounds" from certain eastern points, including Boston, to western points, including Chicago.

It is our finding and conclusion that the fifth class import rate of 27 cents applied to the shipment of glue stock from Boston to Chicago was unjust and unreasonable to the extent that it exceeded the sixth class domestic rate of 24 cents per 100 pounds, and that for the future the rate for the transportation of glue stock from Boston to Chicago should not exceed the rate simultaneously in effect and applying on "fleshings, tanner's, or slaughterhouse offal, and wet hide trimmings, carload," between the same points. Reparation will be awarded in the amount of \$11.51, with interest from July 1, 1910.

On account of the nonjoinder of certain of the carriers participating in the shipment from Philadelphia, Pa., to Gowanda, N. Y., we make no finding with respect to the rate applying between those points. The complaint as to this shipment will be dismissed without prejudice.

It will be ordered accordingly.

No. 3303.

BARRETT MANUFACTURING COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-
PANY ET AL.

Submitted October 10, 1910. Decided January 13, 1911.

Rate of 70 cents per 100 pounds, minimum weight 30,000 pounds, on mixed carload shipments of building and roofing papers, saturated felt and building and roofing felt other than wool felt, found unreasonable to the extent it exceeded 63 cents per 100 pounds, minimum weight 40,000 pounds. Reparation awarded.

E. H. Poetter for complainant.

F. C. Dillard, E. H. Wood, and L. T. Wilcox for Union Pacific Railroad Company.

Herbert Haase for Colorado & Southern Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Chairman*:

This is a petition for reparation on account of an alleged unlawful and unreasonable charge for the transportation of a mixed carload of building and roofing papers and felts, shipped on November 19, 1908, from Chicago, Ill., to Pueblo, Colo., via the lines of defendants. Complaint was filed May 26, 1910. The shipment consisted of 250 rolls of building paper, 102 rolls of deadening felt, 38 rolls of dry felt, and 411 rolls of tarred felt, and the total weight was 40,800 pounds. A rate of 70 cents per 100 pounds was collected, and complainant asks reparation on the basis of 63 cents per 100 pounds, which it claims was the rate legally in effect on mixed carload shipments of the commodities named. It is also alleged that charges were exacted on an excessive weight, but by agreement this allegation was stricken from the record.

Complainant alleges that both dry and deadening felt should be classed as building or roofing paper and that the shipment should take the mixed carload rate of 63 cents, applicable in the tariff to—

Paper, building and roofing (including asbestos roofing and asbestos building paper), and saturated felt, carload minimum 40,000 pounds.

20 I. C. C. Rep.

The rate assessed was under an item which provided for—

Paper, building and roofing (including asbestos roofing and asbestos building paper), and straw wrapping paper, carpet lining made entirely of paper, and roofing felt other than wool felt, straight or mixed carloads, minimum weight 30,000 pounds.

The tariff in effect at the present time carries rate of 60 cents per 100 pounds, minimum weight, 40,000 pounds, on mixed carloads of all building and roofing papers and felts other than wool felt, and would be applicable upon this entire shipment.

It appears from the testimony that neither dry nor deadening felt is in a proper sense a wool felt, although containing about 5 per cent woolen rags, and that probably 99 per cent of all dry felt is used for roofing purposes. The only difference between the two varieties is in weight and thickness. It appears from defendants' testimony that building and roofing paper and building and roofing felt are practically the same thing in the trade, and that the grouping of these articles in the manner stated was purely arbitrary.

The tariff in effect on the date of shipment was such as to lead to confusion and discrimination in the application of different rates to similar mixed carloads. It is our finding and conclusion that the articles, building and roofing paper, and building and roofing felt other than wool felt, are so nearly related and the difficulty of distinguishing between them so great that the tariff providing more advantageous rates and combinations with other similar articles in mixed carloads for the former than for the latter was unreasonable, and therefore that the rate of 70 cents per 100 pounds, carload minimum 30,000 pounds, was excessive and unreasonable to the extent it exceeded 63 cents per 100 pounds, carload minimum 40,000 pounds. Reparation will be awarded in the sum of \$28.56, with interest from December 4, 1908. Since the filing of complaint the carriers have established a mixed carload rate lower than that upon which reparation is herein based, applicable to all building and roofing papers and felts other than wool felts, and no order as to the future is now deemed necessary.

No. 2473.

AMERICAN CIGAR COMPANY

v.

PHILADELPHIA & READING RAILWAY COMPANY ET AL.

Submitted November 16, 1910. Decided January 13, 1911.

Upon the facts disclosed by investigation in this proceeding; *Held*, That existence of commodity rate of 21 cents on tobacco in carloads, Lancaster, Pa., to Richmond, Va., did not result in undue discrimination against Ephrata, Pa., from which point class rate of 24 cents was in force. Overcharge found, and to be refunded without order.

W. R. Perkins for complainant.

Charles Heebner for Philadelphia & Reading Railway Company.

Henry Wolf Bikle for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

In a petition filed May 13, 1909, complainant alleges that the rate of 35½ cents per 100 pounds assessed by defendants for the transportation of two carloads of leaf tobacco in bales from Ephrata, Pa., to Richmond, Va., in March and April, 1908, was unlawful in so far as it exceeded 21 cents per 100 pounds. Reparation is asked.

The combined weight of the two carloads was 43,016 pounds and the freight charges thereon were \$152.71. We find no tariff authority for the rate of 35½ cents. The Philadelphia & Reading Railway Company, which assumed the burden of the defense, says in its answer that 35½ cents is the third class rate, Ephrata to Richmond, published in its tariff I. C. C. No. 2684; that said tariff was subject to the Southern Classification, which provided third class rating upon tobacco, unmanufactured, in bales or crates, in any quantity. However, an examination of the tariff mentioned shows that it was governed by the Official Classification which provided fourth class rating on leaf tobacco in bales, minimum weight 24,000 pounds. The fourth class rate, Ephrata to Richmond, named in tariff I. C. C. No. 2684, was 24 cents and that rate should have been applied to the shipments under consideration. Upon basis of the legal rate of 24 cents the freight charges would have been \$115.20. It follows that defendants collected from complainant \$37.51 in excess of their published rates, and that amount, with interest from May 1, 1908, should at once be refunded without the requirement of an order by the Commission.

Complainant contends, however, that any rate in excess of 21 cents was unlawful, because at the time when the shipment moved there was a commodity rate of 21 cents, to which the Philadelphia & Reading Railway Company was a party, from Lancaster, Pa., and certain nearby points to Richmond.

Ephrata is a local point on the Philadelphia & Reading about 16 miles northeast of Lancaster. The shipments moved over the Philadelphia & Reading to Harrisburg, thence to destination over the Pennsylvania, Washington Southern, and Richmond, Fredericksburg & Potomac railroads. At the same time there was a 21-cent commodity rate to Richmond from Lancaster and nearby competitive points applicable via the Philadelphia & Reading to Philadelphia and thence to Richmond via the Baltimore & Ohio, Washington Southern, and Richmond, Fredericksburg & Potomac railroads. The 21-cent rate from Lancaster was first published by the Pennsylvania Railroad, which is the short line to Richmond, to meet the rate which could be obtained by shipment by rail to Baltimore and thence to Richmond by water. The general freight agent of the Philadelphia & Reading testified that his road established the 21-cent rate from Lancaster via the longer route to meet the competition of the Pennsylvania, and that the lower rate was gradually extended to nearby points because it was found that producers at such points from which the commodity rate did not apply hauled their tobacco to Lancaster by wagon or shipped it there by trolley and forwarded it thence over the Pennsylvania Railroad. By tariff effective June 9, 1908, the 21-cent rate was extended to Ephrata and applied via the same route as that above mentioned in connection with the Philadelphia & Reading rate from Lancaster. The same rate was later made to apply from Ephrata over the Philadelphia & Reading, Norfolk & Western, and Chesapeake & Ohio railroads. It will thus be observed that although the 21-cent rate is now in force from Ephrata to Richmond over two routes it does not apply via the route over which the shipments in question were forwarded.

Defendants insist that the class rate was reasonable and that the extension of the commodity rate to points other than Lancaster was caused by competitive forces beyond their control, and they deny that the publication of the commodity rate from Ephrata subsequent to the movement of these shipments can properly be construed as an admission of the unreasonableness of the rate formerly in force. Upon this record we are unable to find that the rate of 24 cents was unreasonable for the transportation of tobacco in carloads from Ephrata to Richmond, and the record does not indicate that by reason of the lower rate from Lancaster the town of Ephrata was subjected to undue disadvantage. The complaint must therefore be dismissed, and it will be so ordered.

No. 2797.

E. I. DU PONT DE NEMOURS POWDER COMPANY
v.
DEPUE & NORTHERN RAILROAD COMPANY ET AL.

Submitted October 26, 1910. Decided January 13, 1911.

Reparation is sought on the basis of certain commodity rates which, subsequent to the shipments herein involved, were made effective by defendant for one month only. Such reduced rates were effective via competing lines at time of shipments, but for limited time only. No proof presented as to reasonableness of rate. Reparation denied and complaint dismissed.

William A. Glasgow and *Thomas J. Laffey* for complainant.

Henry Wolf Bikle for Pennsylvania Lines.

P. J. Flynn for Delaware, Lackawanna & Western Railroad Company.

O. E. Butterfield for Chicago, Indiana & Southern Railroad Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

N. S. Brown for Wabash Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of powder near Emporium, Pa., and Hopatcong, N. J. In the course of its business it ships sulphuric acid. During the months of February, March, and April, in the year 1909, it shipped from Depue, Ill., to Hopatcong, N. J., 1,633,400 pounds of sulphuric acid, upon which the fifth class rate of 33 cents per 100 pounds was charged, and a total of \$5,383.22 was collected. During the same period complainant shipped from the same point of origin to Emporium, Pa., 1,194,300 pounds of the same commodity and was charged thereon the fifth class rate of 25 cents per 100 pounds, or a total of \$2,985.75. Reparation is asked upon the basis of certain commodity rates hereinafter described.

Shortly before these movements, carriers other than the Chicago, Milwaukee & St. Paul Railway Company had established commodity

rates of 29½ cents per 100 pounds from Depue to Hopatcong, and of 22½ cents from Depue to Emporium, and the Chicago, Milwaukee & St. Paul Railway states that the failure on its part to establish similar rates was due to a clerical error; that this was corrected May 17, 1909, immediately after these shipments had moved. It appears of record that this business was solicited by the Chicago, Milwaukee & St. Paul Railway, and but for the movement over its rails the lower rates would have applied, and also that it was the intention of the carriers generally to establish such lower rates just at the time when this complainant's shipments were to move and that complainant was so advised in advance.

An examination of the tariffs discloses that defendant Chicago, Milwaukee & St. Paul Railway Company, on June 16, 1909, filed its supplement canceling the 22½-cent rate to Emporium and the 29½-cent rate to Hopatcong, thereby retaining the class rates. The lower commodity rates were therefore in effect but one month. The other lines also canceled the commodity rates as soon as these shipments moved.

Complainant produced no proof upon the hearing bearing upon the unreasonableness of the rates charged upon these shipments. Its whole case was based upon the tariff adjustments hereinbefore set forth. In fact, its complaint specifically states that it "disclaims any intention of attacking the reasonableness of the present rates." The "present rates" are the rates paid by complainant from which it seeks reparation. Counsel for defendants stated that the purpose of their appearance at the hearing was to make it appear of record that they "make no admissions of record as to the reasonableness or unreasonableness of rates."

From the tariff situation here disclosed an award of reparation could be based only on a finding that the rates charged were unreasonable for a very brief period, prior to, and immediately after which, the carriers maintained the class rates. We note that defendants formally appeared at the hearing for the express purpose of asserting that their rates were and are reasonable, and to oppose any effort to establish "a definite rate for a definite time," and that there was no evidence that the rates were or are unreasonable. We are not justified under the statute in basing a finding of unreasonableness merely on a temporary tariff adjustment the chief function of which seems to have been to form the foundation for the claim of this complainant for reparation.

Before disposing of this case it is significant to note that it appears from the tariffs on file that effective November 15, 1910, the carriers undertook to establish commodity rates on spent sulphuric acid in tank cars from Howe and Depue to Emporium 18½ cents and to Hopatcong 22 cents. The effective date of the supplement naming

above rates was postponed by the carriers until February 1, 1911, pending investigation by the Commission of advances contained therein, the supplement in question containing both advances and reductions. The carriers promptly filed with the Commission another supplement in which the item above referred to was reissued and made effective November 15, 1910, under authority of Special Order No. 9 of the Commission. Effective December 26, 1910, they now propose to cancel these latter rates and restore the class rates. This circumstance of a short-term commodity rate, both before and after which the higher class rates apply, is very similar to the circumstance in connection with the commodity rate which was in effect for a short term in 1909 involved in this proceeding, and is strongly suggestive of the old evil of "midnight tariffs."

The petition for reparation is denied, and an order will be entered accordingly.

20 I. C. C. Rep.

No. 3089.

FULLERTON POWELL HARDWOOD LUMBER COMPANY
v.
VIRGINIA & SOUTHWESTERN RAILWAY COMPANY ET AL.

Submitted October 5, 1910. Decided January 13, 1911.

Rate charged on a carload shipment of crossties from Harvey, Va., to Muskegon, Mich., found to be unjust and unreasonable in so far as it exceeded the rate contemporaneously in effect between said points on lumber.

Frank Wilson for complainant.

Bills, Streeter & Parker for Pere Marquette Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation located at St. Louis, Mo. Its petition, filed February 1, 1910, seeks reparation because of an alleged unreasonable freight charge collected for carriage of one carload of switch ties from Harvey, Va., to Muskegon, Mich., in November, 1907. Informal complaint was received October 18, 1909. Complainant also alleges damage by misrouting on the part of one defendant.

The car was tendered to the Virginia & Southwestern Railway Company, the initial carrier, with direction to route via "L. & N., Pan Handle, and G. R. & I. Rys." Under this routing the car ordinarily would reach the Grand Rapids & Indiana Railway at Richmond, Ind. Such delivery was desired by complainant, inasmuch as the lumber was sold to the Grand Rapids & Indiana Railway Company f. o. b. its tracks. At the hearing complainant abandoned its claim for damages on account of misrouting and now desires the Commission to fix a reasonable rate for the traffic via the route over which it moved.

The Virginia & Southwestern noted the routing instructions on its waybill, but failed to insert them in the transfer slip to the Louisville & Nashville Railroad, its connection at Appalachia, Va. At that point the shipment was transferred from C. M. & St. P. car 55296 to I. C. car 35506. In the distribution of freight to its northern connections at Cincinnati the Louisville & Nashville Railroad turned the

car over to the Chicago, Cincinnati & Louisville Railroad, and the latter carrier delivered it to the Pere Marquette at Lacrosse, Ind. The Pere Marquette transported the car thence to Muskegon, where it arrived on January 8, 1908. Upon being informed of the arrival of the car at destination, complainant replied that it had no record of the shipment, but that if the contents of C. M. & St. P. car 55296 had been transferred to this car en route, delivery should be made to the Grand Rapids & Indiana upon payment of freight charges. An item of \$7 demurrage resulted from the delay incident to this misunderstanding. The total freight charge demanded by the Pere Marquette, exclusive of the \$7 demurrage, was \$559.40, or a rate of 72 cents per 100 pounds on 77,700 pounds, the weight of the shipment. The Grand Rapids & Indiana, on January 17, refused to pay these charges or to accept the shipment unless returned to Cincinnati and brought to Muskegon via the Pan Handle and its own line, as directed in the bill of lading. On February 7 the Pere Marquette turned the car over to its engineering department and credited the shipper with \$340.47, which is said to represent the current market price of the ties at Muskegon, but which was over \$200 less than the accrued freight charges.

Of the total charges demanded there was a straight overcharge of $9\frac{1}{2}$ cents per 100 pounds on the part of the lines south of Cincinnati, due to an erroneous assumption that the car originated at Pineola, Fla., and correction was issued on that basis. The rate applicable under the tariffs via the route the shipment moved was $62\frac{1}{2}$ cents, composed of $50\frac{1}{2}$ cents to Cincinnati and 12 cents beyond. It is the $50\frac{1}{2}$ -cent rate that forms the real subject of controversy. The Virginia & Southwestern assessed a rate of $2\frac{1}{2}$ cents from Harvey to Appalachia, but this rate was not filed with the Commission. There was no specific rate on cross-ties from Harvey to Cincinnati to which the Louisville & Nashville was a party, nor did the tariffs provide for the application of lumber rates thereon, and the Louisville & Nashville therefore assessed a class rate of 48 cents for its haul from Appalachia to Cincinnati. Since May 25, 1908, the rate on ties from Harvey to Cincinnati has been 14 cents, the same as the lumber rate effective at the time of this shipment. The through rate on lumber from Harvey to Muskegon at that time was 26 cents.

We have heretofore held that ordinarily the rate on cross-ties should not exceed the rate on lumber. Substantially the only difference between cross-ties and switch ties is that the latter vary in length. These ties load between 50,000 and 60,000 pounds per car. In Central Freight Association territory there is usually no distinction for classification purposes between kinds of ties, and ties generally take the lumber rate.

Upon consideration of all the facts disclosed by the record we are of opinion, and find, that the rate assessed upon the shipment in question was unreasonable in so far as it exceeded 26 cents per 100 pounds, the rate applicable to lumber, Harvey to Muskegon, when the shipment moved, and which has been applicable to ties for more than two years. Under that rate the total freight charges would have been \$202.02. Inasmuch as the freight has not been paid, no order for reparation can now be entered. But the Pere Marquette appears to have credited complainant with \$340.47 as the purchase price of the ties, and we see no reason why the entire matter should not be settled by refund to complainant by the Pere Marquette of the difference between the charges herein found to be reasonable and the amount which has been or may be agreed upon as the value of the ties. The Pere Marquette may then adjust its account with connecting carriers upon basis of divisions of the present combination rate of 26 cents, Harvey to Muskegon. Of that rate, one factor has been in force more than two years and the other more than six years. No order for future maintenance of the rate seems necessary to proper disposition of this case.

20 I. C. C. Rep.

No. 8154.

NEBRASKA MATERIAL COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY ET AL.

Submitted October 15, 1910. Decided January 13, 1911.

Rate of 12 cents on common brick from Mound Valley, Kans., to Tecumseh, Nebr., not found to have been unreasonable or unjustly discriminatory as compared with the rate of 8 cents to Lincoln, Nebr., a point 48 miles more distant and on the same line.

T. S. Allen for complainant.

James E. Kelby and *C. E. Spens* for Chicago, Burlington & Quincy Railroad Company.

F. C. Dumbeck for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the sale of building material and has its principal offices at Lincoln, Nebr. By complaint filed March 5, 1910, it alleges, in substance, that a rate of 12 cents per 100 pounds exacted by defendants for the transportation of four carloads of brick from Mound Valley, Kans., to Tecumseh, Nebr., during March and April, 1908, was unreasonable in so far as it exceeded a rate of 8 cents contemporaneously maintained for carriage of the same commodity from Mound Valley to Lincoln, Nebr. Reparation is asked.

Tecumseh is a local station on the Chicago, Burlington & Quincy Railroad, about 48 miles southeast of Lincoln. The shipments moved over the St. Louis & San Francisco Railroad to Kansas City, thence to destination over the Burlington. Traffic carried from Mound Valley to Lincoln over this route passes through Tecumseh. Complainant also called attention to defendants' rate of 7½ cents on brick from Mound Valley to Omaha, Nebraska City, and Plattsmouth, Nebr. The 8-cent rate to Lincoln was canceled by defendants on January 4 and the 7½-cent rate to Omaha, Nebraska City, and Plattsmouth on July 11, 1910, leaving in force to those points a through rate made up of the combination of intermediate rates.

The 12-cent rate to Tecumseh was legally effective at the date of these shipments, and is still in force. Defendants assert that the rate to Tecumseh is reasonable, and that the maintenance of a rate to Tecumseh higher than the rate to Lincoln and the other points mentioned was not prohibited by the fourth section of the act as it existed prior to June 18, 1910, because competitive conditions rendered transportation to the latter points substantially dissimilar from carriage to Tecumseh.

It appears that the Missouri Pacific Railway Company has lines of railroad reaching from points in the so-called Kansas gas belt, in the vicinity of Mound City, to Lincoln, which do not pass through Tecumseh. On January 1, 1907, that company reduced to 8 cents its rate on brick from the Kansas gas belt points to Lincoln. To obtain a share of the traffic the defendants made the same rates as the Missouri Pacific to competitive points such as Lincoln and Omaha, but they did not apply those rates to intermediate points on their lines. Nebraska City and Plattsmouth were given Omaha rates because they are junction points of the Burlington and Missouri Pacific. Defendants say that they canceled the 7½ and 8 cent rates because they were unreasonably low for the service rendered and were considered unremunerative. The following table shows the revenue per ton per mile resulting from the rates here considered, based upon the mileage via defendants' lines:

From Mound Valley, Kans., to—	Rate.	Distance.	Revenue per ton per mile
	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Tecumseh	12	330	0.727
Lincoln	8	378	.423
Omaha	7½	389	.385
Nebraska City	7½	386	.446
Plattsmouth	7½	360	.416

Upon consideration of all the facts disclosed by our investigation our conclusion is that the competitive conditions existing in respect of the transportation to Lincoln, Omaha, Plattsmouth, and Nebraska City were such that the maintenance of a higher rate to Tecumseh was not a violation of the fourth section of the act as interpreted by the courts previous to its recent amendment. An examination of the tariffs shows that the 12-cent rate is fairly in line with rates from points in the Kansas gas belt to other local points on the Burlington, and we are unable to find, upon this record, that the rate to Tecumseh was or is unreasonable. The complaint must therefore be dismissed, and it will be so ordered. It must be understood, however, that our decision in this case is without prejudice to any investigation which may be made under the present requirements of the fourth section.

No. 3286.

IOLA PORTLAND CEMENT COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
ET AL.

Submitted December 13, 1910. Decided January 13, 1911.

Although complainant knew of an existing through route and joint rate over the Atchison, Topeka & Santa Fe and Fort Worth & Rio Grande, it nevertheless routed the shipments herein involved over the Missouri, Kansas & Texas Railway and the Fort Worth & Rio Grande, the applicable published rates being a higher combination of intermediate rates; *Held*, That complainant is not entitled to reparation and that prayer for establishment of through route and joint rate over the Missouri, Kansas & Texas and Fort Worth & Rio Grande, upon supposition that such action is a necessary corollary to an award of reparation, should be denied.

C. L. Shepard for complainant.

Fred H. Wood and *A. E. Haid* for Fort Worth & Rio Grande Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation manufacturing cement at Iola, Kans., seeks reparation on account of the exaction of rates alleged to have been excessive for the transportation of four carloads of cement, during May, June, and July, 1907, from Iola to Comanche, Hasse, Brady, and Stephenville, in the state of Texas, and asks for the establishment of a through route and joint rates for similar service over defendants' lines. Complaint was filed informally June 2, 1909.

The shipments moved over the Missouri, Kansas & Texas Railway to Fort Worth, Tex., and thence over the Fort Worth & Rio Grande Railway to destination. These lines had not established joint rates applicable to the traffic, and the rates lawfully assessed were combinations upon Fort Worth ranging from 41 to 49½ cents per 100 pounds. There was a through route over the Atchison, Topeka & Santa Fe

and Fort Worth & Rio Grande Railways from Iola to points of destination, with a joint rate of 31.5 cents. The joint rate available to complainant by way of the Santa Fe was known to it at the time of shipment. No evidence was offered for the purpose of showing that the rates assessed were unreasonable, and the only reason suggested for giving the traffic to the Missouri, Kansas & Texas was an alleged assumption that the latter road would be able to "protect" the rate published over another route. Obviously, such a state of facts can not be made the basis of an award of reparation under the act to regulate commerce, as such a result would be in substance an entire perversion of the fundamental provisions of the statute in respect of the publication of rates and adherence thereto.

It remains to be determined whether an additional through route should be established for the future. Complainant's case rests upon the evidence of one witness, who is its traffic manager at the present time, but was not in any way connected with it in 1907. His testimony as to all the essential facts, therefore, was based upon what he had learned from others, and there was no indication that he had established the accuracy of his information. The former traffic manager of complainant, under whose direction the shipments were made, was within reach during the hearing. In response to the suggestion of the examiner that his evidence might be valuable, complainant's representative replied that he did not desire to offer more evidence. Complainant's witness stated that it was his understanding that there had been a car shortage in 1907; that the distance is less and the train schedules shorter via the Missouri, Kansas & Texas than via the Santa Fe; that if left to a choice, he would rather have reparation in this case than an additional through route for the future; and that he would not be asking the establishment of a through route except that he understood it to be a necessary corollary to an award of reparation. It is a fact that the distance over the present route is about one-sixth greater than over the route proposed by complainant; but as to any other difference in favor of the proposed route the evidence is so vague and unsatisfactory that no definite finding can safely be predicated thereon.

It is our conclusion that the facts of record are not such as, in our judgment, require the relief asked in the petition, and it will therefore be dismissed.

No. 2929.

C. H. ALBERT COMPANY

v.

DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted October 10, 1910. Decided January 13, 1911.

Rule of the Western Classification providing that less-than-carload shipments consisting of separate packages shall be rated one class higher when each package, bundle, or piece is not plainly and indelibly marked with the name of consignee and the name of the station, town, or city and the state to which destined, condemned as an unreasonable regulation or practice affecting the rate. Reparation awarded.

G. M. Stephen for complainant.

E. N. Clark and *J. G. McMurray* for Denver & Rio Grande Railroad Company.

E. B. Peirce and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, Chairman:

On November 17, December 11 and 15, 1908, complainant delivered to the Denver & Rio Grande Railroad Company at Farmington, N. Mex., three less-than-carload shipments of goat and sheep skins, weighing 1,379, 1,150, and 375 pounds, respectively, for transportation to Chicago, Ill. The Chicago, Rock Island & Pacific, the delivering carrier, collected charges on the basis of \$6 per 100 pounds. Complainant asks reparation in the sum of \$58.10, alleging that the rate assessed was excessive and unreasonable to the extent it exceeded \$4 per 100 pounds, and in effect challenges the reasonableness of Western Classification rule, effective on the dates of shipment, providing that less-than-carload shipments consisting of separate packages shall be rated one class higher when each bundle, package, or piece is not plainly and indelibly marked with the name of consignee and the name of the station, town, or city and the state to which destined.

There was no through rate in effect on goat and sheep skins between the points named, the through charge applicable to less-than-carload

shipments being made up of the combination of intermediate first class rates and amounting to \$4 per 100 pounds via Denver, the route of movement. The class higher was one and one-half times first class, which made the through charge applicable under the classification rule \$6 per 100 pounds.

It appears that the higher charge was exacted solely on the ground that the bundles comprising the shipments were not marked in accordance with the rule referred to, being marked Diamond A, Chicago, or, to be more exact, with a large letter "A" surrounded by a rectangle, which appears to have been complainant's practice in the past. The bills of lading covering these shipments show the name of the consignor and that the same were consigned to "Diamond A (the sign being used), Chicago, Ill., notify John Miller & Co., Chicago, Ill." The rule challenged was contained in the issue of the Western Classification effective on the dates of the shipments here involved, but in no other issue previous or subsequent thereto.

The Commission can find no lawful authority for a tariff provision the effect of which is to establish two rates for the same transportation service and the same liability in connection therewith. The higher rate of defendants on packages not properly marked was in the nature of a penalty, and it is plainly apparent that such a rule would in its practical application result in discrimination, in that the higher rate would be applied in some cases and the lower in others, due to the fact that there could be no uniformity in the determination by the various agents of the carriers of the question of fact as to whether or not particular packages were properly marked. All questions of this nature ought to be settled before the goods are accepted by the carrier, and it is clearly within the power and authority of carriers to establish reasonable and just regulations requiring proper packing and marking of consignments before acceptance by them for transportation, which will amply protect them from negligence by shippers in this respect.

It is our conclusion that the rule in effect at the time of shipment was an unreasonable regulation or practice affecting the rate, and an order of reparation will therefore be entered against both of the defendants in the sum of \$58.08, with interest from January 20, 1909. As the rule condemned is not now in force no order as to the future is necessary.

There was a lower combination of rates via Pueblo in effect at the time of \$3.85 per 100 pounds, and as the evidence is that the originating carrier is responsible for not providing that routing, the order will require that carrier to make reparation in the additional amount of \$4.36, with interest from January 20, 1909, due to its negligence.

No. 3241.

EDISON PORTLAND CEMENT COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted November 19, 1910. Decided January 13, 1911.

Upon all the facts disclosed by the record, the Commission is unable to declare defendants guilty of negligence in not having established through routes and joint rates for the transportation of complainant's shipments of Portland cement from New Village, N. J., to Williamstown and Enosburg Falls, Vt.

F. C. Morris for complainant.

J. L. Seager for Delaware, Lackawanna & Western Railroad Company.

C. S. Pierce for Boston & Maine Railroad.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant is engaged in the manufacture of Portland cement at New Village, N. J., and claims, in this proceeding, damages with respect to two carload shipments of its product.

The first shipment was a carload of cement in paper sacks from New Village to Williamstown, Vt., and the route was via the Delaware, Lackawanna & Western, Delaware & Hudson, and Rutland companies to Burlington, thence by Central Vermont to destination. Charges were assessed by combining the joint through rate then in effect from New Village to Burlington with the local rate of the Central Vermont from Burlington to Williamstown. Complainant concedes that both the joint and the local rates were reasonable. The route taken was that indicated by the complainant.

The second shipment was a carload of Portland cement, in paper sacks, from New Village to Enosburg Falls, Vt., and the route via Delaware, Lackawanna & Western, Delaware & Hudson, Boston & Maine, and St. Johnsbury & Lake Champlain to Sheldon Junction,

and Central Vermont from Sheldon Junction. This routing was indicated by the complainant. Charges should have been assessed upon the combination of the joint through rate from New Village to Sheldon Junction plus the local rate from Sheldon Junction to destination, but through some error, the nature of which did not clearly appear, the shipment was overcharged at destination by the amount of \$56.43.

This overcharge was admitted upon the hearing, and it was stated that refund had not been made for the reason that the Boston & Maine and the Central Vermont were unable to agree as to which was responsible for the error and which should make the refund. Upon suggestion that the complainant should not be deprived of its money by this disagreement among the carriers and that this Commission ought not to be troubled with suits growing out of differences of this kind, it was stated that this amount would be at once paid to the complainant, and this has since the hearing been done.

This case is therefore to be disposed of upon the assumption that both shipments were routed by the defendants according to the instructions of the complainant and that the charges assessed were the published tariff rates then in effect. Nor does the complainant claim that either the joint rates or the local rates applied were excessive, when considered as such. Its complaint is that the defendants should have had in effect at the time of these shipments joint through rates from New Village to the destination points named.

There was in effect at this time from New Village to these points via New York and boat from thence to New London a joint through rate to both these points which was satisfactory to the complainant, upon Portland cement in barrels and in cloth sacks, but inasmuch as this rate applied to a route which involved a water carriage, cement in paper sacks could not be sent under it. Since the movement of these shipments a joint through rate has been established to these points via the New York, New Haven & Hartford which is satisfactory to the complainant.

It appears that some time before these shipments the complainant had applied to the Delaware, Lackawanna & Western for a through route and a joint rate to these Central Vermont points and that this company had endeavored to establish such through arrangements with the Central Vermont via the lines over which these two shipments moved, but without success. There is no evidence in this case which indicates, nor can the Commission from its knowledge of the situation find, that such a through route ought to have been in effect at the time of these shipments. The fact that the Central Vermont declined to enter into such through arrangements and that the present through route is via a different line rather indicates that that company may have been justified in refusing the proposition of the Delaware,

Lackawanna & Western for such through arrangements. We can not therefore award damages against these defendants for failure to have in effect a through route and a joint rate under which these shipments might have moved.

Neither can we award damages against the Delaware, Lackawanna & Western and the other railroads which make up the present through route. Without deciding whether we might under any circumstances award damages against those lines over which a shipment did not actually move upon the theory that there should have been a rate under which it might move, we are not satisfied upon this record that either the Lackawanna or the other carriers in that route, which are not parties to this proceeding, were at fault. The Delaware, Lackawanna & Western has finally succeeded in establishing joint rates under which the complainant can ship its cement in paper sacks to these Central Vermont points, and we can not say that it was guilty of negligence in not having been able to bring about this arrangement at the time of the movement in question.

The complaint must therefore be dismissed.

20 I. C. C. Rep.

No. 3455.
BEEKMAN LUMBER COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted November 18, 1910. Decided January 13, 1911.

Proportional rate of 11 cents on lumber, Winfield, Ala., to Thebes, Ill., restricted in its application to shipments destined beyond Thebes, held inapplicable when the only destination indicated on the bill of lading was Thebes proper. Combination rate of 23½ cents assessed for the movement of a car of lumber as from point of origin to Thebes proper found unreasonable and lower rate prescribed for future. Reparation awarded.

G. H. Lowry for complainant.

A. P. Humburg for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant corporation, having its principal place of business in Kansas City, Mo., is engaged in the manufacture and sale of lumber. Its petition, filed August 10, 1910, puts in issue the reasonableness of rates exacted by defendants for carriage of a carload of gum lumber, weighing 45,700 pounds, shipped December 21, 1906, from Brilliant, Ala., to Thebes, Ill., and thence forwarded to Clinton, Iowa. Informal complaint covering the same subject matter was filed with the Commission March 25, 1908. Reparation is asked.

Complainant made this shipment and consigned the car to itself at Thebes. No routing instructions were given by the shipper. In the absence of a joint through rate, defendants carried the shipment via the Illinois Central Railroad from Brilliant to Winfield, Ala., St. Louis & San Francisco Railroad to Aberdeen, Miss., Illinois Central Railroad to Gale, Ill., and Chicago & Eastern Illinois Railroad to Thebes, on a combination rate of 24 cents per 100 pounds, and freight charges in the sum of \$109.68 were collected. Subsequently a refund of \$2.28 was authorized by the Commission and paid by the Illinois Central, because the Commission found in the investigation of the informal complaint above mentioned that the shipment should have

been routed via Illinois Central, Brilliant to Winfield, St. Louis & San Francisco to Thebes, via Memphis, Tenn., on combination rate of 23½ cents.

At time of shipment there was no rate from Winfield to Thebes proper. There was a rate of 11 cents per 100 pounds from Winfield to Thebes when "for beyond." This rate was applicable only on shipments billed to Thebes, plainly showing that they were destined for beyond. Complainant claims that it intended to re-consign the shipment from Thebes to Clinton, Iowa, and was therefore entitled to the rate of 11 cents, Winfield to Thebes for beyond. The bill of lading shows destination as Thebes proper, but complainant says that its custom was to send instructions respecting re-consignment to the division freight agent of the Chicago & Eastern Illinois Railroad Company at Salem, Ill., before arrival of cars at destination. No direct evidence is presented of the time the car arrived at Thebes, but the date was probably January 10, 1907, because on that date the agent at Salem, Ill., telegraphed for instructions as to disposition of the car. A letter giving such instructions, under date of December 24, 1906, is in evidence, but apparently it did not reach its destination, or the agent would not have telegraphed. A second letter, under date of January 10, 1907, repeated the instructions. Complainant's witness testified that it paid no re-consignment charge, though such payment was required by the carrier's rules. Under the circumstances, the prayer for reparation upon basis of the combination of the rate to Winfield plus the 11-cent proportional rate beyond is denied.

There remains the question whether the rate of 23½ cents, Brilliant to Thebes, was reasonable. There was a rate of 16½ cents in effect at time of shipment from Brilliant to Cairo, Ill., proper, or for beyond. Thebes is only 29 miles farther, and although it is commercially less important than Cairo, and its rates less subject to competitive forces, still a higher charge of 7 cents for this 29-mile haul appears unreasonable. Indeed, since August, 1910, the rate from Cairo to Thebes, which is one of the factors used in making up the combination rate to Thebes, has been reduced from 7 cents to 4 cents, making the through combination rate from Brilliant to the latter point 20½ cents.

Upon the record it is our opinion, and we so find, that the rate of 23½ cents was unreasonable in so far as it exceeded a rate of 20½ cents, and that because of the exaction of the unreasonable rate aforesaid complainant is entitled to reparation in the sum of \$13.71, with interest from January 10, 1907. An order will be entered awarding reparation in the amount named and requiring defendants to maintain for two years their present rate of 20½ cents for the transportation of gum lumber in carloads from Brilliant, Ala., to Thebes, Ill.

No. 3133.

R. E. COBB ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted December 9, 1910. Decided January 13, 1911.

1. Complainants, engaged in the operation of creameries at Minneapolis and St. Paul and using the centralizer method, bring this complaint to compel defendants to establish the same tariff on cream in cans as was fixed by the Commission in the *Beatrice case*, 15 I. C. C. Rep., 109; *Held*, That nothing in the conditions of operation, nor in the financial showing of these defendants, nor in the commercial conditions surrounding this traffic, renders unjust the application over the lines of these defendants of the same rates between interstate points within a distance of 510 miles from St. Paul as were prescribed in the *Beatrice case*, and it is highly desirable that there should be uniformity in all this territory when that can be attained without any sacrifice of justice.
2. Present rates for the transportation of cream in cans between interstate points within a distance of 510 miles from St. Paul, Minn., found unreasonable, and defendants ordered to establish rates prescribed in the report as maxima for the future.
3. There ought always to be harmony between state and interstate transportation by rail; but under the circumstances of this case this Commission feels that it can not deny the prayer of complainants. These centralizers are engaged in the manufacture of butter at St. Paul, in the course of which they draw their supplies from points without the state of Minnesota and they also sell their product at points without that state. The very purpose of this Commission is to see that persons requiring interstate transportation shall be accorded just and reasonable charges for that service; and it has no right to respect the policy of the state of Minnesota nor of the state of North Dakota if they interfere with the application of a just and reasonable transportation charge for this interstate service.

Durment, Moore & Sanborn for complainants.

Charles Donnelly for Northern Pacific Railway Company and Northern Express Company.

J. D. Armstrong for Great Northern Railway Company and Great Northern Express Company.

Alfred H. Bright for Western Express Company and Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

Andrew Miller, Attorney General of North Dakota, for Board of Railroad Commissioners of the state of North Dakota, interveners.

Young & Stone and *Edward T. Young* for Minnesota State Dairy-men's Association, and Minnesota State Butter & Cheese Makers' Association, interveners.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

In *Beatrice Creamery Co. v. I. C. R. R. Co.*, 15 I. C. C. Rep., 109, the Commission established a distance scale of rates applicable to the transportation of cream in cans, and this complaint is brought to compel the defendants to establish that same tariff. The considerations upon which the rates were fixed in the former case are fully stated in the opinion, to which reference may be had for an understanding of the various questions involved.

The complainants are centralizers, conducting their business in Minneapolis and St. Paul, who draw their supplies of cream from Minnesota and neighboring states. That received from the state of Minnesota is carried upon a tariff prescribed by the railroad commission of that state; that received by interstate shipment apparently takes in all instances the rates prescribed in the *Beatrice case*, except when it moves over the lines of the Great Northern, Northern Pacific, and Minneapolis, St. Paul & Sault Ste. Marie railways.

The defendant express companies operate over the above lines of railway and handle the cream which is transported upon those several lines. They have filed, and are enforcing, schedules of rates which are substantially, though not precisely, the same for the different companies, and which are, on the whole, higher than those prescribed in the *Beatrice case*. These rates are attacked by the complaint as unjust and unreasonable. The rates involved are those upon 5-gallon, 8-gallon, and 10-gallon cans, but the 10-gallon can is ordinarily regarded as the unit, and it will be sufficient to consider the rates of the defendants applicable to a package of that size. In the table below are given the rates now charged by the defendant Western Express Company and the rates fixed by the Commission in the *Beatrice case* upon 10-gallon cans:

Distance.	Defendant's rates.	Beatrice rates.	Distance.	Defendant's rates.	Beatrice rates.
<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
10	19	20	235	57	39
25	20	20	250	60	40
30	21	21	265	63	41
35	21	22	280	66	42
40	21	23	295	69	43
45	21	24	310	72	44
50	21	25	325	75	45
60	22	26	340	78	46
70	24	27	355	81	47
80	26	28	370	84	48
90	28	29	385	87	49
100	30	30	400	90	50
115	33	31	415	93	51
130	36	32	430	96	52
145	39	33	445	99	53
160	42	34	460	102	54
175	45	35	475	105	55
190	48	36	490	108	56
205	51	37	505	111	57
220	54	38			

It will be seen from a comparison of the above columns that the rates of the defendants are lower than those prescribed by the Commission up to 100 miles, but that beyond 100 miles the rates of the defendants are much higher than those of the Commission. It will also be seen that the rates of the defendants increase slowly up to about 60 miles, while beyond 100 miles they increase rapidly.

Some years ago the Railroad and Warehouse Commission of the state of Minnesota established a scale of rates applicable to the transportation of cream within that state, and the rates of the defendants are substantially, although not exactly for the longer distances, a reproduction of those state rates.

Great numbers of local creameries exist in the state of Minnesota, for the most part on the cooperative plan. It is the belief of the authorities of that state that these local creameries should be fostered at the expense of the centralizer, and, while it was not directly said upon the hearing, there can be no doubt that the state rates were made for the purpose of assisting the local creameries in competition with the centralizers.

It appeared that many of the Minnesota cooperative creameries have become centralizers themselves to a limited extent, drawing their supplies from comparatively short distances, not exceeding 60 miles. This state tariff up to 60 miles is unusually low, while beyond that distance it rapidly increases.

The Minnesota commission has recently considered, upon application of these same complainants, a prayer for a revision of its cream schedule, but has reached the conclusion that the present rates shall remain in effect.

The Railroad Commission of North Dakota, through its chairman and attorney general, appeared at the hearing and upon the argument, and stated that in its opinion the true policy of that state lay in the encouragement of its local creameries, and that for this reason it objected to the putting in of the Beatrice rates which would enable these complainants to transport cream from various points in that state to St. Paul for manufacture. The authorities of North Dakota believe that this cream should be intercepted before it leaves the state and manufactured into butter within the boundaries of that state.

It would be our inclination to leave these rates as they are if we could properly do so. There ought always to be harmony between state and interstate rates of transportation by rail; but under the circumstances of this case we feel that we can not deny the prayer of the complainants. These centralizers are engaged in the manufacture of butter at St. Paul, in the course of which they draw their supplies from points without the state of Minnesota and they also sell their product at points without that state. The very purpose

of this Commission is to see that persons requiring interstate transportation shall be accorded just and reasonable charges for that service.

In the *Beatrice case* we reached the conclusion that both the centralizer and the local creamery were legitimate industries; that in some cases the interest of both consumer and producer were best subserved by the centralizer; in other cases by the local institution. Our conclusion there was that it was our duty to establish just and reasonable rates of transportation without attempting to foster the one at the expense of the other. So, here we have no right to respect the policy of the state of Minnesota nor of the state of North Dakota, providing that interferes with the application of a just and reasonable transportation charge for this interstate service.

While the peculiar conditions in the *Beatrice case* may have somewhat influenced the scale of rates which was prescribed, still that schedule was named for an extended territory and was believed to be just and reasonable to all parties and interests involved. We find nothing in the conditions, of operation, nor in the financial showing of these defendants, nor in the commercial conditions surrounding this traffic which would render unjust the application over the lines of these defendants of the same rates which were prescribed in the *Beatrice case*, and it is highly desirable that there should be uniformity in all this territory when that can be attained without any sacrifice of justice.

We are of the opinion that the rates named below for the distances named below are just and reasonable to be observed by the defendants as maxima for the future, and that the present rates are unreasonable and unjust in so far as they exceed those named:

Distance.	10-gallon can.	8-gallon can.	5-gallon can.	Distance.	10-gallon can.	8-gallon can.	5-gallon can.
<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
25	20	18	14	235	39	35	27
30	21	19	15	250	40	36	28
35	22	20	15	265	41	37	29
40	23	21	16	280	42	38	29
45	24	22	17	295	43	39	30
50	25	22	17	310	44	40	31
60	26	23	18	325	45	40	31
70	27	24	19	340	46	41	32
80	28	25	20	355	47	42	33
90	29	26	20	370	48	43	34
100	30	27	21	385	49	44	34
115	31	28	22	400	50	45	35
130	32	29	22	415	51	46	36
145	33	30	23	430	52	47	36
160	34	31	24	445	53	48	37
175	35	31	24	460	54	49	38
190	36	32	25	475	55	49	38
205	37	33	26	490	56	50	39
220	38	34	27	505	57	51	40

The defendants will not be required to apply these rates over their whole systems, but only within a distance of 510 miles from the city of St. Paul. When an express company operating over one of the defendant rail lines has established and is maintaining these rates, the railroad company will be exempted to that extent from the effect of this requirement.

An order will be issued accordingly.

No. 3156.

A. C. PARFREY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted October 26, 1910. Decided January 14, 1911.

Rate of 34½ cents per 100 pounds for transportation of cheese boxes in carloads, Richland Center, Wis., to Dodgeville, Wis., found unreasonable. Reparation awarded.

E. H. Parfrey for complainant.

William Ellis and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the manufacture and sale of cheese boxes at Richland Center, Wis. In his petition, filed March 8, 1910, he alleges that the rates exacted by defendants for the transportation of four carloads of cheese boxes from Richland Center to Dodgeville, Wis., in July, August, September, and October, 1909, were unreasonable in so far as they exceeded a joint commodity rate subsequently established.

During the period from July 13, 1909, to October 1, 1909, complainant shipped from Richland Center to Dodgeville four carloads of cheese boxes, weighing in the aggregate 59,750 pounds, upon which

total freight charges were collected in the sum of \$205.46. The shipments were carried from the point of origin to Madison, Wis., by the Chicago, Milwaukee & St. Paul Railway Company, and from Madison to destination by the Illinois Central Railroad Company, the route of the latter company extending through a portion of the state of Illinois. The charges were based on the combination of intermediate fourth class rates, minimum carload weight 15,000 pounds, made up of 15 cents from Richland Center to Madison, plus $19\frac{1}{2}$ cents from Madison to Dodgeville, resulting in a through rate of $34\frac{1}{2}$ cents. Defendants stated that since June 8, 1907, a joint rate of $17\frac{1}{2}$ cents has been applicable to the traffic over the lines of the Chicago, Milwaukee & St. Paul Railway Company and the Chicago & North Western Railway Company. The movement over that route is wholly within Wisconsin and the tariff naming the rate was not filed with this Commission. We note, however, that in *Parfrey v. C., M. & St. P. Ry. Co.*, 4 Wis. R. R. Com. Rep., 450, decided February 2, 1910, the railroad commission of Wisconsin found that the rate via the intrastate route was 29 cents, and ordered a reduction to $17\frac{1}{2}$ cents. The distance by the intrastate route is 104 miles, by the interstate route 168 miles. Complainant was unaware of a difference in rates over the two routes, and directed movement of the traffic via the Illinois Central upon request of his consignee. No rate was inserted in any of the bills of lading. The defendants followed the instructions given by the shipper, and therefore, even assuming that their statement respecting the rate via the intrastate line is correct, they are not chargeable with misrouting.

On October 19, 1909, defendants established a joint commodity rate of $17\frac{1}{2}$ cents on cheese boxes in carloads, Richland Center to Dodgeville, applicable via the route over which the shipments moved. Reparation is asked in the difference between the charges collected and the charges which would have accrued under the subsequent joint rate. We are not inclined to hold that defendants should be required to accept for the transportation performed a rate which appears to have been deemed reasonable over a much shorter route. On the other hand, we find that the rate collected, amounting to 4.1 cents per ton per mile, was somewhat excessive, and that a rate of $28\frac{1}{2}$ cents would have afforded fair compensation for the service rendered. Under that rate, applied to a minimum carload weight of 15,000 pounds, complainant is entitled to reparation in the sum of \$31.33, with interest from October 6, 1909. In view of the fact that defendants have established a much lower rate than that here used as a basis for reparation, no requirement as to the rate to be charged for the future is necessary at this time. An order will be entered awarding reparation in the amount above mentioned.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted December 9, 1910. Decided January 14, 1911.

1. In determining what is a reasonable charge for furnishing refrigeration for the movement of citrus fruits from California to eastern markets, nothing should be added by reason of the fact that a refrigerator car is used, since that has been taken into account in establishing the rate of transportation, nor for the service of inspection, which is substantially the same for all shipments; but the expense of transporting the additional weight of the ice and for repairs to the ice bunkers should be considered.
2. Defendants' present charges for the refrigeration of oranges in transit from California points to the east found not unreasonable.
3. Refrigeration and precooling are entirely different, and precooling as practiced by the shippers differs from that furnished by the carriers. The two methods are discussed, and the conclusion reached that while it can not be affirmed with entire confidence that precooling can take the place of standard refrigeration, under all circumstances, it is evident that the great bulk of the orange crop may be moved by precooling as applied by the shippers.
4. Upon the facts disclosed by the record, it must be found that precooling at the packing house is a practical method which the complainants are anxious to use and for the efficiency of which they are willing to stand responsible, while the method advocated by the carriers is of doubtful practicability and one which the complainants do not dare to use and which the defendants are unwilling to guarantee.
5. In view of the circumstances under which these oranges are transported, it is the duty of the carrier to furnish refrigeration upon reasonable demand, and in so far as the furnishing of that refrigeration is a part of the service rendered by the carrier, the carrier may insist upon its right to furnish that service exclusively; but it appears that the service of precooling, as these shippers desire to use it, can only be performed by the shippers themselves, and the Commission thinks that upon the present record it is the right of these complainants to precool and preice their shipments. If, however, the carrier has been put to additional expense in the furnishing of the car or in the handling of the shipment, it should be allowed proper compensation upon that account.
6. Carriers are not in case of these precooled shipments entitled to additional compensation by reason of the fact that a refrigerator car is furnished, but they are entitled for repairs to ice bunkers to an additional charge per car per trip one way.
7. Defendants' present precooling charges for oranges in transit from California points to the east found unreasonable and reasonable charges established for the future.

Mayer, Meyer, Austrian & Platt; F. E. Matthews; A. F. Call, and J. H. Call for complainants.

Robert Dunlap, E. W. Camp, T. J. Norton, and Gardiner Lathrop for Santa Fe system companies.

F. C. Dillard, W. R. Kelly, P. F. Dunne, C. W. Durbrow, and W. F. Herrin for Southern Pacific Company, Union Pacific Railroad Company, and others.

Harry L. Titus for San Diego, Cuyamaca & Eastern Railway Company and San Diego Southern Railway Company.

A. S. Halsted for San Pedro, Los Angeles & Salt Lake Railroad Company.

S. A. Lynde for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complaint in this proceeding puts in issue both the charge for transportation and that for refrigeration. The Commission disposed of the transportation phase in an opinion promulgated June 11, 1910, reserving for consideration all questions as to refrigeration, and those are now before us for determination. 19 I. C. C. Rep., 148.

Two systems of refrigeration are involved, known as "standard refrigeration" and "precooling." These will be considered separately.

STANDARD REFRIGERATION.

Under this system the oranges are loaded into a refrigerator car before either the fruit or the car has been artificially cooled, the boxes being so packed as to allow a free circulation of air between and around them. After being loaded the car is taken to some gathering point, usually San Bernardino, upon the line of the Santa Fe and Colton, upon the line of the Southern Pacific, when the shipments originate in southern California, and the bunkers are there filled with ice. As the car journeys east the bunkers are opened from time to time and replenished with additional ice.

This kind of refrigeration has been long in effect and is still the one generally used. The charges from California points in case of oranges and lemons are, per standard car, \$60 to the Missouri River, \$62.50 to Chicago and similar points, \$72.50 to Buffalo and Pittsburg, \$75 to New York, and \$77.50 to Boston. The complainants insist that these charges are excessive. Since no claim is made that they do not bear a proper relation to one another, that to Chicago may be considered.

The parties do not agree as to the basis upon which the reasonableness of these charges is to be determined. The complainants

insist that the defendants are only entitled to the actual cost of the ice used in this service, and as evidence of this point to a letter from the president of the Santa Fe system stating that his company has never desired to make any profit over and above the cost of the ice, and to what are claimed to be similar statements upon the part of the Southern Pacific representatives. They also refer to the testimony before the Commission when attack was formerly made upon these refrigeration charges, *Consolidated Forwarding Co. v. So. Pac. Co.*, 10 I. C. C. Rep., 590, 610, where these same charges were approved and where it appeared that the cost of the ice approximately equaled the amount of the charge.

The defendants contend that the charge for refrigeration should include in addition to the cost of the ice compensation for the use of the car, the extra cost in maintaining a car of this type, the hauling of the ice, and the inspection which the cars receive en route.

The fact that refrigeration is required and the circumstances under which it is called for and furnished render it necessary to use a refrigerator car as a practical matter for the transportation of these citrus fruits at all periods of the year. In determining the freight rate this fact has been taken into account; that is, the rate applied on shipments under ventilation has been adjusted in view of the fact that a refrigerator car, more expensive than the ordinary box car, must, as a practical matter, be employed. Hence, in determining the additional sum which the shipper who has the benefit of refrigeration shall pay, nothing should be added by reason of the fact that a car of this type is used.

It appears that when the bunkers are filled with ice certain repairs to that portion of the car are necessary which are not ordinarily required, and that the expense of these repairs is perhaps \$5 a trip, on the average. This is an item of cost which should be properly charged against the refrigeration service.

The bunkers of a Santa Fe car, as ordinarily filled in standard refrigeration, contain about 9,000 pounds. Those of the Southern Pacific cars are somewhat larger, containing about 10,000 pounds. The ice melts as the car moves on from icing station to icing station, so that the weight of the ice is not, on the average, as much as the full bunker. Probably a fair average weight would be from 7,000 to 8,000 pounds, being somewhat greater upon the Southern Pacific lines than upon those of the Santa Fe. The defendants claim that they should be allowed for the hauling of this additional weight which is not carried when the shipment moves under ventilation.

The complainants answer that this has been taken into account in determining the citrus-fruit rate and ought not to be again considered

in fixing these refrigeration charges, and as evidence of this points once more to the declarations of the president of the Santa Fe system. There are also some expressions in the opinion of the Commission in this case which indicate that in approving the rate of \$1.15 consideration was given to the fact that a portion of the shipments moved under refrigeration and therefore involved the hauling of this additional load.

The complainants also urge that no allowance should be made for the hauling of the ice in fixing the refrigeration charge, because that service is rendered by the railroad company which transports the fruit, while the refrigeration service is rendered by an independent company in case of both the Santa Fe and the Southern Pacific. Since this refrigeration company performs no transportation service, it can not properly be allowed anything for the handling of this ice.

While this argument is a fair one upon its face, it is, in reality, without merit. The railroad company is responsible for both the transportation and the refrigeration service. It may, if it deems best, furnish the refrigeration by contract with some independent agency, but it still stands responsible to the public. In the present instance the refrigeration company while independent in theory, is, in fact, the creature and property of the railroad upon which it operates. We think that the reasonableness of this refrigeration charge should be determined in the case before us exactly as though the service were rendered by the railroad company itself. If the two companies were to be considered as independent and the charge fixed with reference to the refrigeration company alone, still it might be that the railroad company by its contract with the refrigeration company had agreed to haul the ice and allow that company to charge for it.

It is plain that in determining the additional charge, which the shipper who requires refrigeration should pay in addition to the amount exacted from the shipper who does not receive refrigeration, the cost of this additional haul should be charged against the refrigerated shipment. Otherwise, the grower who picks his oranges earlier in the season, when they can be sent through under ventilation, will be compelled to contribute to the expense of transporting the fruit of his neighbor who does not market his crop until later. We hold that the expense of transporting this additional weight should be considered in fixing the charges for refrigeration.

Exactly what the amount fairly allowable on this account should be it is impossible to determine. The defendants claim that they may properly apply to this load the orange rate \$1.15 per 100 pounds, which, upon an estimated weight of 8,000 pounds of ice to the car, would produce an additional charge of \$92, materially more than the

entire charge for refrigeration to the most distant point. Clearly, the additional expense to the railroad company of hauling in the same car this extra weight of ice would be but a fraction of the amount above named. It is not probable that the actual additional cost to the carriers could exceed upon the average \$20 per car.

The defendants further claim that they are entitled to charge something for inspection, but the service in case of refrigerated shipments is but little different from that given to the movement under ventilation, save for the work of examining and filling the ice bunkers, which may properly be included in the cost of the ice.

The largest item of expense, and that most considered, is the cost of the ice itself. Upon the original hearing there was a sharp difference of opinion as to the amount of ice required in the refrigeration of these shipments, and for the purpose of satisfying itself as to the fact the Commission conducted a series of experiments covering the last weeks of April, May, June, and July, 1910. These tests were carried on only upon the line of the Santa Fe up to and including Argentine, Kans., which is the icing station of that company at Kansas City. Shipments are not iced after leaving Argentine until they reach Corwith, the breaking-up yard of the Santa Fe, just outside of Chicago, where the car is always reiced when the destination is beyond Chicago, and frequently, and perhaps usually, when for Chicago delivery.

Without giving the figures it is sufficient to say that the quantity of ice used for the weeks in question was approximately 10 tons, including the icing at Argentine, and that an additional ton would probably be required on the average in case of Chicago deliveries, making the total amount of ice required to refrigerate a car of citrus fruits from southern California to Chicago about 11 tons. The quantity is somewhat greater in June, July, and August, but the number of cars refrigerated is very much less.

No observations were made by the Commission upon the lines of the Southern Pacific, but that company has introduced elaborate figures from which it appears that the quantity of ice used in the cars of that system is somewhat greater than upon the Santa Fe, probably from one to two tons per car.

It is impossible to determine with exactness the cost of this ice. It costs materially less to-day than when this matter was formerly under investigation by the Commission. At Los Angeles at the present time ice is supplied in the bunkers for \$2.25 per ton. It can undoubtedly be put into the bunkers at the plants of the Southern Pacific and the Santa Fe at Colton and San Bernardino for the same sum, at a handsome profit, including interest on the investment and depreciation, provided the plants are run to anything

like their capacity. At some other points the cost is much greater. On the whole an average from \$2.50 to \$3 per ton would be liberal to the carrier. The average cost to the Santa Fe of the ice required up to Chicago would not much exceed \$30 per car.

The cost of refrigeration to Chicago upon that line would therefore total as follows:

Cost of ice.....	\$30
Cost of repairs to bunkers.....	5
Hauling of ice.....	20
Total.....	55

To this should be added a certain element of risk which the carrier must assume in the rendering of this service, and, as was held in *Southern Ry. Co. v. St. Louis Hay & Grain Co.*, 214 U. S., 299, a fair profit upon the transaction.

It is evident, therefore, that stated upon this basis the present charges for refrigeration can not be regarded as excessive. This result is confirmed by reference to refrigeration rates from Florida points to New York and Chicago, which have been approved by us, and are for half-tank service \$50 per car, for full-tank service \$75 per car. It must be remembered, however, that the ordinary movement from Florida is in box cars under ventilation and that when refrigeration is required a refrigerator car is specially furnished for that service—an important difference.

We fail to find that the charges for standard refrigeration are excessive.

PRECOOLING.

The system of refrigeration known as precooling, which is essentially different from the standard refrigeration just considered, grew out of experiments conducted by the United States Department of Agriculture into the handling of oranges. Those researches demonstrated that decay in oranges was due mainly to mechanical injury in the handling and that if this could be avoided refrigeration was not necessary to prevent decay, but only to preserve the appearance of the fruit. While the greatest care is now exercised in the handling of the orange from the tree to the car, abrasions of the skin can not be entirely avoided, and the experiments above referred to further demonstrated that in case of such injury the result was minimized by cooling the fruit at the earliest possible moment and maintaining thereafter a low temperature. It was more difficult to arrest and control the process of decay when it had once fairly set in than it was to check it at its inception.

Precooling grew out of these investigations of Professor Powell and was tried by him in the course of his experiments. In actual

practice it takes two forms, which may be termed precooling by the shipper and precooling by the railroad. These two methods are essentially different and must be understood in order to intelligently appreciate the question presented.

In precooling by the shipper the basic idea is to bring the fruit under the influence of a low temperature at the earliest possible moment. The oranges are brought from the tree to the packing house and packed in a box which is immediately deposited in a cold room. Here the process of extracting the heat from the orange at once begins and gradually continues until at the end of from twenty-four to forty-eight hours all parts of the fruit in all parts of the box have been reduced to a uniform temperature of from 33° to 35° F. The box remains in this cold room at this temperature until it is to be loaded. The car is then connected with the room by a collapsible passageway and the oranges are taken directly from the cold storage to the car, where they are placed, not with air spaces between, as in case of ordinary refrigeration or ventilation, but close together. The bunkers of the car are filled with large blocks of ice especially intended for that purpose, and the bunkers and vents are now sealed up so as to make the car as nearly air-tight as possible. All this is done by the packer at the packing house, and the car is now delivered to the railroad with instructions to transport to destination without reicing and without breaking the seals.

The cost of precooling and preicing a car in this manner, including interest on the investment and depreciation of the plant, is from \$30 to \$35, a fair average being, perhaps, \$32.50.

Upon the first hearing the defendants denied that during the warm months it was practicable to ship oranges from southern California to eastern markets without icing in transit. The experiments of Professor Powell had indicated that this could be done, and the testimony upon the first hearing showed that during the season of 1908-9 numerous shipments had been actually made by this method with perfect success. It appeared, however, that these cars had frequently been opened and reiced in transit against the instructions of the shippers, and it did not seem to the Commission that the practicability of this system had been conclusively shown.

For the purpose of putting this to a demonstration as far as possible, we required a record to be kept during the season of 1909-10 which would show, in case of precooled shipments, point of origin, date of shipment, destination, date of arrival, amount of ice in bunkers at time of arrival, temperature of car at arrival, and condition of fruit. Such records have been kept, the report made up at destination being usually certified to by a representative of the California

Fruit Growers Exchange and also of the refrigeration company or the railway.

These precooled shipments have moved from four points.

There was in partial operation during the season a small plant at Uplands of which no very accurate account appears in this record, and which may be disregarded.

At Los Angeles the oranges were shipped in from the packing house, placed in cold storage, and when reduced to a proper temperature loaded into the cars which were then iced and sealed. It will be observed that the application of the system at this point did not involve those features to which the complainants attach the greatest importance; that is, a considerable length of time intervened between the packing of the oranges and the placing of the box in cold storage. These preiced cars from Los Angeles appear to have carried fairly well, but the privilege of stopping off for that purpose has been withdrawn by the defendants, is not insisted upon by the complainants, and the results from that point, therefore, may be omitted. It should perhaps be noted that they do not in any way discredit, but rather tend to confirm, the claim that precooling when conducted as the complainants say it should be is feasible.

There are in operation at East Highlands and Pomona two plants in which precooling is carried on in a manner approved by the complainants. These plants were in operation during the season 1908-9, and the evidence tended to show that cars so treated had carried to destination in good condition at all seasons of the year. The records above referred to show that for the season just passed 124 cars of precooled and preiced fruit were shipped from East Highlands, all of which reached destination in good order; that 207 were shipped from Pomona, of which 7 showed more than 3 per cent decay. Shipments from East Highlands were mostly completed in the month of June, but those from Pomona extended through the month of July. It fairly appears that during all these months these precooled and preiced shipments carried as well as contemporaneous shipments moving under standard refrigeration. The complainants insisted that the fruit reached destination in better condition and commanded a better price than that refrigerated by the carriers.

It was said upon the second hearing that the carrying capacity of the fruit for the season of 1909-10 was above the average, from which the defendants argue that a weak fruit could not have been transported without reicing in transit, while the complainants insist that the advantages of their system would have been even more conspicuous, owing to the benefit of placing the fruit under early refrigeration.

While it can not be affirmed with entire confidence that precooling can take the place of standard refrigeration under all circumstances, it

is evident that the great bulk of the orange crop may be moved by this method as applied by the shippers.

The method of precooling practiced by the carriers is entirely different from that already described. No attempt is made to cool the fruit until after it has been placed in the car; but the cars themselves, loaded exactly as they would be for transportation under ventilation or under standard refrigeration, are taken to the precooling station which, in case of the Santa Fe is at San Bernardino, and in case of the Southern Pacific at Colton.

The precooling itself is accomplished by forcing a blast of cold air through the car which contains the fruit. At the beginning of the process the air entering the car is considerably below freezing, but as the fruit becomes cooler the temperature of the current is raised.

These plants, of which the Santa Fe is said to have cost \$500,000 and the Southern Pacific \$750,000, are both for the manufacture and storage of ice and the precooling of the fruit. They are modern in every respect. An entire trainload can be precooled at once, the time occupied being from two to four hours, according to the temperature and intensity of the blast.

The complainants deny the practicability of this system, and assert that the system as practiced by them is superior in the following particulars:

1. It is essential that the fruit be brought immediately under the influence of refrigeration, since, as already suggested, incipient decay can be dealt with much more effectively than after it has progressed for a period. They assert that it is of the utmost importance that the fruit should be placed at once in a cold temperature, which is secured under their system and not under the system of the defendants. They also insist that in the limited time allowed the fruit in the interior of the box can not be brought to a uniform low temperature.

2. It is claimed that the cold blast which is first applied to the hot fruit is liable to damage the fruit itself. Even though the orange is not frozen, the cells of the skin are injured in the same way that they are by frost, with the result that while the fruit will not decay the skin loses its power of resistance and dries up, thus impairing the appearance of the fruit.

This was denied by the defendants, and there was no testimony as to actual results.

3. It will be remembered that as oranges are loaded for shipment under ventilation or standard refrigeration, the boxes are separated in the car so as to permit the free circulation of air. Under the system of the shippers, the boxes of cold fruit are placed close together in the car, and it was said that this was necessary since the solid mass of cold fruit was relied upon to maintain an even temperature in the

car. By this method an additional tier of boxes can be loaded, thereby increasing the paying load of the car one-sixth.

The defendants insisted that it was possible under their method to precool a solid carload of fruit and gave evidence showing that this had been done, but it seems reasonable that where a circulation of air is relied upon for precooling the fruit must be so arranged that the cold air can come readily into contact with the fruit.

4. Under the system of precooling by the packer the oranges can be retained in the cold room until the car is placed for loading. Since at times there is great difficulty in obtaining cars exactly when ordered, it is frequently necessary to pile up a considerable quantity of oranges waiting loading. Under the system of the defendants these oranges are without refrigeration from the time they are packed until they reach the precooling station in the car, while under the system of the packers they are in cold storage and can be held without danger. Precooling by the packers tends, therefore, to minimize the effect of car shortage.

The complainants believe that the system of precooling as practiced by the defendants is not equivalent to their own, and they have declined to take the hazard of that method. The defendants themselves express the opinion that oranges will not carry to destination without reicing, either under their own system or that of the complainants, and they have declined to assume the responsibility of that form of refrigeration as offered by them.

Upon this record, therefore, it must be found that precooling at the packing house is a practical method which the complainants are anxious to use and for the efficiency of which they are willing to stand responsible, while the method advocated by the carriers is of doubtful practicability and one which the complainants do not dare to use and which the defendants are unwilling to guarantee.

When precooling was first tried no additional charge was made by the carriers. After the precooling plants at East Highlands and Pomona had been erected a charge of \$30 per car was established; that is, if the shipper precooled and preiced his car and the carrier then transported that car to its destination without icing in transit, the shipper was required to pay \$30 per car, which the complainants contend is unreasonable. The defendants now state that this charge was established for experimental purposes; that they deny the legal right of the shipper to precool and preice his fruit and are satisfied that that privilege ought not to be accorded upon any terms. While they have allowed their tariffs to remain in effect pending this proceeding, they express the intention upon its determination of withdrawing the privilege entirely. Two questions are therefore presented for our determination.

1. Has the shipper the legal right to precool and preice his shipments in the manner indicated?

2. What, if any, charge may the carrier reasonably make when the car is so treated?

The position of the defendants seems to be this. In case of a considerable portion of the year transportation without artificial cooling is impossible, and refrigeration is therefore a part of the service of transportation. Both the courts and the Commission have decided that carriers must, under such circumstances, be prepared to furnish reasonable refrigeration upon reasonable request. Now, if it is the duty of these defendants to furnish this refrigeration service, then they may insist upon performing the entire service. The shipper has no right to provide refrigeration himself to-day and call upon the railroad company for that service to-morrow. To permit such a course is to demoralize the service of the defendants and prevent them from discharging their duty with economy and efficiency.

The above propositions can not be controverted. In view of the circumstances under which these oranges are transported, it is the duty of the carrier to furnish refrigeration upon reasonable demand, and in so far as the furnishing of that refrigeration is a part of the service rendered by the carrier, the carrier may insist upon its right to furnish that service exclusively. Without referring to authorities or attempting to state reasons, we accept these fundamental propositions as correct. The question therefore is, Does the shipper in case of these precooled shipments demand of the carrier any refrigeration service? Does the carrier in the case of such shipments render any service in addition to the naked transportation?

These cars are prepared by the shipper and are delivered to the carrier with instructions to transport to destination without opening the bunkers or breaking the seals. The entire duty of the carrier is discharged when it places that car in its train and hauls it to its destination.

It is urged that the defendants can not stipulate against the consequences of their own negligence and that they ought not to be required to assume the responsibility unless they are allowed to discharge the service. But what responsibility is it that the carriers assume in connection with the transportation of one of these precooled cars? Clearly there is no responsibility in the matter of refrigeration. The carrier is simply required to haul that car to its destination. That duty it must perform and it must perform it within a reasonable time and in a reasonable manner.

Its obligation is exactly the same with respect to a precooled car as to a ventilated car. No question is raised as to the right of the carrier to transport such a car.

instruct the carrier not to ice one of these cars, and that these instructions must be followed by the carrier. If such a car is left upon the desert or is not carried with reasonable expedition, so that the fruit injures, whereas had it been properly moved there would have been no injury, the carrier is responsible. In the same way it must handle a precooled car with due diligence, and if so handled there can be no liability for defective refrigeration.

The carrier should have the right to protect itself against the consequences of its negligence by opening the bunkers and filling them with ice in the same manner in case of a precooled as in case of a ventilated shipment, the expense being borne by the carrier. It is difficult to conceive of a condition in which the limitation of the carrier's responsibility could be more clearly defined than here. When it undertakes to supply standard refrigeration there may always be a question as to the condition of the fruit when it started and as to the sufficiency of the refrigeration itself, and the facts determining that liability may always be open to doubt; but with the precooled shipment the one element of fact is the time of the transit, as to which there can be no serious dispute.

The first section provides that the furnishing of the car is a part of the transportation, and it may be claimed here since the carrier furnishes the car and since a refrigerator car is required that it thereby assumes a part of the refrigeration service.

It should be noted that while the same car is used for precooling and for standard refrigeration the two things are entirely separate. The mere fact that the carrier is required to furnish for this mode of shipment a refrigerator car does not entitle it to insist upon moving that shipment under standard refrigeration.

Oranges can not be moved in box cars without ventilation. Let us assume that the ventilated car had been unknown and that the entire citrus-fruit crop had moved at all seasons of the year under refrigeration. It is discovered that by the use of a car so constructed that a current of air can be forced through the oranges by the motion of the car, two-thirds of the citrus-fruit crop can be transported without the expense of refrigeration. Could the defendants under these circumstances insist that all oranges should continue to move under refrigeration and would they rest under no obligation to provide ventilated cars?

During the last season 40,000 carloads of citrus fruits moved from California to eastern markets, and during the present year that number will probably be increased to 50,000 cars. During many months nearly one-half of the entire eastern movement upon at least one of these transcontinental lines is made up of oranges and lemons. This vast tonnage should be handled in the most economical and satisfac-

tory manner, and these carriers should furnish for that movement such cars as will effectuate that purpose. They have a right to insist upon a proper compensation for supplying that equipment, but they have no right to say that old methods must continue in use and new methods held in abeyance rather than change the form of their cars.

The carrier may insist upon furnishing all the equipment which is needed for the movement of precooled shipments and might decline to use equipment furnished by the shippers, but it can not refuse to furnish proper equipment upon fair terms; certainly not when, as in the present instance, no change in its present equipment is required.

It was suggested upon the argument that inasmuch as these bunkers were filled with ice in case of precooled shipments as well as in standard refrigeration the carrier had the right to insist upon furnishing the ice even though the grower might precool his fruit. A moment's consideration will show that this contention is without merit and would if sustained be without benefit to the carrier. The ice with which these bunkers are filled is not manufactured by the railroad at the point where it is used. It would be necessary to fill the bunkers with ice at San Bernardino or Colton and move the car when iced to the packing house. By the time it reached there the ice would have been partially exhausted and this would render it necessary to open and refill the bunkers.

This service should be performed in the most economical manner and it is evident that the ice can be best supplied by the same parties who load the car and prepare it for shipment. The filling of the bunkers with ice is a part of the preparation of the car for shipment and not a part of the transportation service which is rendered by the railroads. It should also be noted that great importance is attached to the filling of the bunker completely and with large cakes of ice which will melt slowly.

To allow the carrier to fill these bunkers would be a source of no profit to it and would introduce an element of discord into the transaction. If the car arrived in bad condition the shipper would be apt to say that the bunkers had not been properly reiced or that the car had not been properly sealed. That uncertainty is removed where the shipper makes the car ready for transportation and the service rendered by the carrier is purely one of transportation. It seems clear that the carrier itself would prefer that this icing should be done by the shipper rather than attempt to do it at anything like what would be the actual cost to the shipper plus a reasonable profit to the carrier.

There is another rule of law which might under some circumstances find application here, viz, that that carrier is not obliged to allow

its patrons to enter into competition with itself and to furnish facilities for so doing. While precooling may not be the same thing as refrigeration it takes the place of refrigeration. Can the carrier be compelled to furnish the facilities for performing this service or to allow the shipper to perform that service which does away with the necessity of refrigeration and renders useless the facilities which it has provided for rendering that service?

It does not seem necessary in this case upon the present record to express an opinion upon that question, for the reason that before the carrier can rely upon this argument it must be in shape to render an equivalent service for a substantially equivalent price. If these defendants were in position to offer these shippers a service which in efficiency and in expense was practically the same as that offered by precooling, a different question would be presented which is not here decided.

It should be carefully observed that precooling as practiced by the shipper can not be rendered by the carrier. The nature of the thing done is such that it can only be done by the shipper. A single part of the service, the furnishing of the ice for the bunkers of the car, might be rendered by the carrier at an additional expense and with inferior result. Taken as a whole the service of precooling, as these shippers desire to use it, can only be performed by the shipper himself. Nor do the carriers offer any substitute for it. Cars can be precooled and preiced at the plants of the defendants, but the defendants themselves frankly state that they can not safely carry to destination without reicing. We do not feel that these shippers are obliged to submit their fruit to the hazard of the method of precooling and preicing, which these defendants themselves decline to guarantee.

The testimony shows that precooling as practiced by the defendants at San Bernardino and Colton saves from one to two tons of ice, and no more, so that the expense of standard refrigeration is not lessened by precooling although the efficiency of the service may be somewhat improved. In other words, the only substitute which these defendants offer for precooling is the standard refrigeration or what is equivalent to that.

The matter, therefore, stands like this: The United States Government has suggested, and these shippers acting upon the suggestion, have perfected a system of handling these oranges, by which they can be carried during all heated months to destination at an expense of \$32.50 per car approximately. The carriers offer an alternative system at a charge of \$62.50, or probably slightly more on the average, and this charge for that service has been found to be reasonable. May the carriers insist that the shipper shall pay this higher charge or has the shipper a right to avail himself of the modern method?

During the season last past some 17,000 carloads of oranges moved under refrigeration. The season which is now opening will probably see an increase in that number to 20,000, and in the near future it will doubtless rise to 25,000 cars. The saving per car between the method of the shipper and the charge of the defendant is from \$30 to \$40, which means an annual saving to these complainants of from \$600,000 to \$800,000 per year. If it be the law that these defendants have a right to impose upon this traffic this enormous burden, then the law should be changed, for the practical result of this application is monstrous; in our opinion it is not the law. We think that upon the present record it is the right of these complainants to precool and preice their shipments. If the carrier has been put to additional expense in the furnishing of the car or in the handling of the shipment, it should be allowed proper compensation upon that account, and this brings us to the final question: What, if any, additional compensation may the railroad charge?

For a short time after shippers began to precool and preice their cars no charge was made by the carriers over and above the ordinary rate applied to ventilated shipments. It soon became evident, however, that this method of refrigeration was much cheaper than standard refrigeration and thereupon the charge of \$30 per car was imposed. It will be remembered that the cost of precooling is about \$32.50 per car and that the price of standard refrigeration to Chicago is \$62.50 per car. The difference therefore between the cost of precooling and the rate for standard refrigeration upon the average is about \$30 per car and there can be no serious question that the carriers in establishing this charge intended to equalize the cost by the two methods. This they are not entitled to do, but if they are put to additional expense for which they receive no compensation in the rate they are entitled to an additional charge sufficient to cover that expense with a reasonable profit upon the transaction.

The car used for the shipment is exactly the same whether the movement is under ventilation or refrigeration or is precooled and preiced. We have already seen that the use of this special car is taken account of in the rate of \$1.15 per 100 pounds. Carriers are not, therefore, in case of these precooled shipments entitled to additional compensation by reason of the fact that a car of this type is necessary and furnished.

We have seen that in case of standard refrigeration there is an expense in providing and keeping in repair the ice bunkers which is not presented in the ventilated movement, and this is equally true in case of the precooled shipment. The carrier is, therefore, entitled to this additional cost, which is about \$5 per car per trip one way.

The bunkers are filled with somewhat more care and somewhat more compactly in case of the precooled than in case of the refrigerated

shipment. Upon the Santa Fe the average weight of the ice in case of these precooled shipments would be at the packing house at least 5 tons. It was found that at the end of the journey these bunkers were from one-sixth to one-half full of ice. The melting would take place more rapidly during the early than during the later part of the journey, and it would be a liberal estimate to put the average weight of the ice during the entire journey at 5,000 pounds. For the hauling of this ice the carriers are entitled to fair compensation, as they are in the case of standard refrigeration.

It has already been said that oranges when moved under ventilation or refrigeration must be placed in the car with air spaces between the boxes, and this requires a loading of six tiers wide and two tiers high. The packers load these precooled shipments solid, which means that an additional tier can be placed in the car, thereby increasing the weight of the paying freight by exactly one-sixth. This adds in case of the Santa Fe route \$53, and in case of the Southern Pacific route, those cars being somewhat larger, \$55 to the freight received per car. The carrier for handling the same car with increased weight receives this additional sum while the actual additional cost of moving the car can not exceed one-half that amount.

As bearing upon the reasonableness of the rate, the carriers showed the cost of the movement of these oranges per gross ton—that is, per ton of combined weight of car and of contents as compared with other articles—claiming that this was the true basis upon which to fix rates. So treating these precooled shipments, it will be found that the carrier receives more per gross ton for handling the precooled car than for either the ventilated or the refrigerated shipment.

By every canon of rate-making which has been applied by carriers in the past, or which is relied upon by them now, these precooled shipments at the standard rate without additional compensation are better business than either the ventilated or the refrigerated movement.

Clearly these growers who have devised and perfected this system of shipment should not be compelled to pay for the privilege of using it more than the fair cost to the carrier of providing the additional facilities which are not included in the ventilated rate with a fair profit. We are of the opinion that the precooling charge of \$30 per car is unreasonable and that this charge should not exceed \$7.50 per car.

It is urged that to allow shippers to precool their own shipments will result in discrimination in favor of the large and against the small shipper, but this is not apparently true under actual conditions at the present time.

Oranges must pass through a packing house, and these houses are generally available to small and large patrons alike. Any packing house of considerable size would be forced to provide itself with

facilities for precooling if this method were generally introduced, and these facilities would therefore be open to growers generally.

But if they were not it is doubtful whether either the carriers or this Commission should deprive the great majority of growers of the right to use this improved and more economical method simply because it could not be made universally available. This, as we have seen it, is a part of the preparation of the shipment for transportation and not of the transportation itself.

It is also stated that to permit precooling without the imposition of a greater charge than we have fixed would destroy the value of the plants which the Santa Fe and the Southern Pacific have erected at San Bernardino and Colton.

If this was so the argument would not be conclusive. There is no growth without decay. The improved process renders worthless the old machine in every field of industry. If the march of improvement has made antiquated and valueless the icing plants of these defendants, that is no reason why the better system should not be introduced.

But there is no such situation in this case. These plants of the defendants are modern in construction and were built largely in view of the experiments made by Professor Powell. They are both ice-making and precooling plants. Apparently the precooling part is of little value, since it saves nothing in the cost of standard refrigeration and does not take the place of it. If these defendants, in view of all the circumstances, have made a mistake in the erection of these facilities they have no right to insist that the public shall make good that blunder.

There is, however, no probability that these facilities will be rendered useless if the shippers are allowed to precool. We have seen that the actual cost to the shipper is between \$30 and \$35 per car, to which must be added \$7.50 per car, and that a considerable outlay is involved. If these defendants will put into a tariff what they have so often and with such earnestness stated, viz, that they desire only the fair cost of the ice used in refrigeration, no more precooling plants will be erected. If a refrigeration rate of \$45 were named to Chicago, precooling would be in the main eliminated and the carriers would make a handsome profit upon the ice actually furnished.

In 1905, when we approved the reasonableness of these present refrigeration charges, the sworn testimony of the Santa Fe showed that the actual cost of the ice to the Missouri River was \$54.32 per car. *Consolidated Forwarding Co. v. So. Pac. Co., supra*. Since then that cost has declined, until to-day it does not exceed \$30 per car. If these defendants will reduce their refrigeration charges by a little over one-half this saving in cost there will be no further question of precooling.

We do not mean that these defendants are under any legal obligation to reduce their present charges for standard refrigeration, for these charges have been found to be reasonable, but we simply point out that these defendants by making good their past declarations as to the theory upon which their refrigeration charges have been established can escape what they say will be disaster to the capital invested in their icing plants. Presumably the defendants have been honest in these declarations, and it may be assumed that their icing plants were erected upon that idea.

The defendants say that if precooling and preicing by the method which the shippers advocate is feasible, then they can precool and preice at their plants with equal success. It is not denied that the cost of precooling and preicing at Colton and San Bernardino would be much less than \$30 per car.

Now, if these defendants will establish for this kind of precooling a rate commensurate with the actual cost, or not much in excess of the cost, to the shipper and will guarantee the result of that system, this will effectually prevent a further erection of precooling plants by the growers. The growers of California do not desire to refrigerate their shipments of oranges; they prefer that this should be done by the carriers, but they do insist that the carriers shall not charge for that service more than it can be performed for by the methods which they have devised. In this we sustain them. If the carrier does not see fit to furnish standard refrigeration at less than the present rate, and if it can not furnish precooling of the kind supplied by the shipper, then we think the shipper should be allowed to precool and preice for himself. No reason is obvious why there should be laid upon this traffic an annual burden substantially sufficient in amount to reproduce each year the facilities which these defendants say would be destroyed if permission to precool is granted.

We are of the opinion that the present precooling charges of the defendants of \$30 per car are unjust and unreasonable, and that these charges should not exceed for the future \$7.50 per car; but the defendants may, as a condition of making this charge, require that precooled cars be loaded seven tiers wide and two tiers high, and may provide by their tariffs a proper minimum to accomplish this result, the amount of which would depend upon the length of the car.

No. 2980.

**BALTIMORE BUTCHERS' ABATTOIR & LIVE STOCK
COMPANY**

v.

**PHILADELPHIA, BALTIMORE & WASHINGTON RAIL-
ROAD COMPANY ET AL.**

Submitted November 4, 1910. Decided February 13, 1911.

1. The refusal of defendants to deliver to the sidetrack of complainant, at Gwynn's Run, Baltimore, the live-stock shipments consigned thereto found unreasonable and in violation of law. Order issued that such delivery be hereafter made.
2. Carriers should not make contracts which abrogate the act to regulate commerce; they should not refuse, because of their own contract, to furnish a delivery that is reasonable upon tracks which they use as a terminal for the shippers; and they should not discriminate between commodities in the delivery which they give, where no reason exists for such discrimination excepting the presence of a contract made with a private corporation, as in this case.

S. S. Field for complainant.

George Stuart Patterson for defendants.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The complainant is a corporation and conducts in the city of Baltimore an abattoir for slaughtering live stock; it dresses the carcasses, maintains refrigerator facilities, manufactures fertilizer, cures hides, and cleans wool, but neither buys nor sells live stock or meat. It furnishes these facilities to whoever may bring live stock to the plant for slaughter, but its chief patronage comes from retail meat dealers of the city who are stockholders in the company.

The complainant alleges that it owns a sidetrack in the city of Baltimore connecting its plant with the main line of the Philadelphia, Baltimore & Washington Railroad Company, a part of the Pennsylvania Railroad system; that this sidetrack has been in existence for more than 20 years and has been used for the delivery of all classes of freight except live stock; and that since the establishment

of the Union Stock Yards of Baltimore, the defendants, although frequently requested to do so, have refused to deliver live stock to the complainant upon its sidetrack and insist on unloading it at the Union Stock Yards, nearly two miles distant from its abattoir. It therefore prays that an order be issued to compel the defendants to deliver upon its switch, at Gwynn's Run, Baltimore, all live stock shipped over their lines that is consigned to its siding and to receive all live stock tendered to them when so consigned upon the same terms as stock consigned to the Union Stock Yards at Baltimore.

At the time of the organization of the complainant corporation in 1886 the Calverton stockyards was the depot of the Pennsylvania system, in the city of Baltimore, for the delivery of live stock. In order to have the advantage of these facilities, the complainant purchased a tract of land from the Calverton Stock Yards Company, which immediately adjoined those yards, and there erected a plant costing more than \$150,000. All live stock coming by rail, which was consigned to the complainant's abattoir or purchased by the patrons of the complainant, was unloaded in the Calverton yards and driven directly into the complainant's plant. Under a contract made in 1889 between the complainant and the Baltimore & Potomac Railroad Company a sidetrack connecting the complainant's plant with that company's tracks was constructed by the railroad company, the cost of which the complainant paid. The railroad company has ever since kept the sidetrack in repair, the expense being borne by the complainant. All shipments to and from the plant of the complainant, except live stock, have been handled on this sidetrack and have averaged from 50 to 60 carloads per year. In addition, the track has been used for a large number of shipments by a tenant of the complainant.

While the Calverton stockyards were in operation on the Pennsylvania line, there was a plant of similar character on the Baltimore & Ohio Railroad, within the city of Baltimore, known as the Claremont stockyards. The existence of two general stockyards in the city developed unsatisfactory market conditions and resulted in the organization in 1891 of the Union Stock Yards Company, to whose plant the business of the Calverton and Claremont stockyards was transferred. The Baltimore & Potomac Railroad Company, which since that time has been merged into the Philadelphia, Baltimore & Washington Railroad Company, with other lines in 1891 entered into an agreement with the new Union Stock Yards Company, which provided that:

The said railroad companies shall and will make the said stockyards their live-stock depot for Baltimore and vicinity and shall deliver at said yards all the live stock which may be transported over their lines * * * destined to the Baltimore market * * *.

Subsequent to the establishment of its central yards the Union Stock Yards Company constructed small yards on the Pennsylvania tracks at Orangeville, in the northeastern suburbs of the city, and at Highlandtown, on the Baltimore & Ohio tracks, in the southeastern suburbs, for the delivery of live stock to dealers in those sections.

The new central yards^s were nearly two miles from the establishment of the complainant and the closing of the Calverton yards deprived it of the facilities for the delivery of live stock, which influenced its location there and which constituted an important aid in the conduct of its business. The new auxiliary yards at Orangeville and Highlandtown were not near the plant of the complainant and could be of no advantage to it. In view of these conditions the officers of the complainant asked the defendants to deliver upon its sidetrack live stock in carloads intended for its abattoir, but this request was refused and the stock purchased in western and southern markets by customers of the complainant and shipped in carload lots was delivered at the Union Stock Yards, even when in the bill of lading the point of delivery was designated as the "Baltimore Butchers Abattoir & Live Stock siding, Baltimore, Md." Since the establishment of the Union Stock Yards it has been necessary for the complainant to drive all live stock destined for its plant which has come by rail nearly two miles through the streets of Baltimore, across electric railroad lines and a grade crossing of the Philadelphia, Baltimore & Washington Railroad, at considerable expense and great risk of injury or loss of the stock. The disadvantage suffered by the complainant in the handling of live stock in this manner is alleged to have prevented the normal development of its business, and its officers testified that practically the only patronage it has been able to secure has been that of its own stockholders, although it has facilities for handling twice as much business as it now enjoys. The complainant estimates that the live stock which would be delivered at its yards if the right prayed for were granted would be 15 carloads per week.

The defendants contend, in justification of their course, that they have a lawful right to establish an exclusive depot for the delivery of live stock in the city of Baltimore and to refuse to deliver it elsewhere and that they have designated the Union Stock Yards as such exclusive depot. It is also asserted that the maintenance of such a central stockyards is of advantage to the trade of Baltimore and that the concentration of the business has permitted the abolition of all yardage and weighing charges, both of which existed prior to the establishment of the Union Yards. The defendants cite the decision of the Supreme Court of the United States in *Covington Stock Yards v. Keith*, 189 U. S., 128, as sustain-

ing their action in constituting the plant of the Union Stock Yards Company their sole instrumentality for the unloading and delivery of live stock in Baltimore. In that case the court said:

“In respect to the mere loading and unloading of live stock it [the railroad] is only required by the nature of its employment to furnish such facilities as are reasonably sufficient for the business at that city. So far as the record discloses, the yards maintained by the appellants are, for the purposes just stated, equal to all the needs, at that city, of shippers and consignees of live stock,” but held that whether the railroad company furnishes the yard itself or provides them under a contract with another, it can not charge or authorize anyone else to charge for the mere service of loading or unloading and delivery. This case is not in point since it involved but one simple question, whether a carrier could farm out its terminal facilities and allow its agent to impose charges upon live stock passing through a terminal stockyard. The court decided that the carrier had no such right and held that, “as the appellant did not accord to appellees the privileges they were entitled to from its principal, the carrier, and as the carrier did not offer to establish a stockyard of its own for shippers and consignees, the court below did not err in requiring the railroad company and the receiver to receive and deliver live stock from and to the appellees at their own stockyards in the immediate vicinity of appellant’s yards, when the former were put in proper condition to be used for that purpose, under such reasonable regulations as the railroad company might establish.”

The establishment of the complainant is on the main line of the Philadelphia, Baltimore & Washington Railroad, and all live stock hauled to the Union Stock Yards from the south and west passes it. There is no controversy between the parties relative to compensation for making deliveries on the sidetrack of the complainant; the complainant expresses a willingness to pay a reasonable charge for such deliveries if that be necessary. There is no question in this case of a need for the furnishing by the railroad company of means for unloading live stock. The yards for its receipt and care and the switch connection and sidetrack reaching the yards are now and for many years have been in use. No physical obstacles to the delivery of live stock at the yards are shown to exist. No operative problems need be solved by the railroad officials before such deliveries can be made. The sole reasons shown in the record for refusal on the part of the defendants to deliver live stock at complainant’s yards are the alleged advantages to the general live-stock market of Baltimore arising from the centralizing of the business and the provision in the contract with the Union Stock Yards Company,

under which it is agreed that the yards of that company shall be the exclusive live-stock depots.

Defendants receive the fertilizer and other products of the abattoir on this track and deliver thereon the coal, hay, grain, and other articles needed by complainant. Moreover, they receive and deliver on this track for at least one other shipper. By long usage and in accordance with the custom of carriers generally, this track is regarded as the point of delivery and receipt of carload freight and we have heard no argument against the use of this track for live-stock deliveries, except that this would be a violation of the contract which the carriers have made with the Union Stock Yards. Whether the phrase in the contract, "destined to the Baltimore market," was intended to refer to cattle to be sold alive at the yards, which seems a reasonable construction, or was intended to cover the delivery of all live stock in Baltimore, is not of prime importance, in our opinion. The railroads defendant may not make contracts which abrogate the act to regulate commerce; they may not refuse, because of their own contract, to furnish a delivery that is reasonable upon tracks which they use as a terminal for these shippers; they may not discriminate as between commodities in the delivery which they give, where no reason exists for such discrimination excepting the presence of a contract made with a private corporation, as in this case. The amended act to regulate commerce provides that it is the "duty of all common carriers to establish, observe, and enforce just and reasonable regulations and practices affecting all matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property."

We find that the refusal of the defendants to deliver to the sidetrack of the complainant live stock consigned thereto is unreasonable and in violation of the law. An order will be issued that such delivery be hereafter made.

20 I. C. C. Rep.

No. 3197.
MILLER & LUX
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted September 27, 1910. Decided February 13, 1911.

Rate collected on shipment of live stock found unreasonable because released valuation was not written in live-stock contract. Reparation awarded.

Edward F. Treadwell for complainant.

Nathan P. Bundy for defendants.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This case was informally brought to our attention on February 15, 1910, and formal complaint was filed March 25, 1910, and it is stipulated that complainant corporation, whose principal place of business is at San Francisco, Cal., is a breeder, raiser, buyer, and seller of live stock; that February 25, 1908, A. H. Long and defendants entered into a "live-stock contract" for the transportation of 692 head of cattle from El Paso, Tex., to Bakersfield, Cal., consigned to complainant, and defendants agreed that the freight charges for such transportation would be at the rate of \$107 per 30-foot car, with an additional charge on each car exceeding 30 feet, inside measurement, of 3 per cent for each foot or fractional part thereof in excess of 30 feet as provided in Southern Pacific Tariff, I. C. C. No. 2919; that the rate of \$107 per 30-foot car was in accordance with El Paso Joint Tariff, I. C. C. No. 2834 for shipment of cattle at a released value of \$10 per head and, at the time of execution of said contract, the shipper, A. H. Long, and the agent at El Paso of defendant Galveston, Harrisburg & San Antonio Railway Company *intended* that the live stock should be shipped at released valuation of \$10 per head, but through inadvertence on the part of the agent and shipper the released valuation at \$10 per head was not specified in the contract; that the cattle were shipped in twenty-three 36-foot cars, and upon the delivery of said cattle at

Bakersfield, Cal., on March 2, 1908, defendant Southern Pacific Company prepared and sent to complainant a freight bill for the transportation of said cattle, by which bill complainant was charged at the rate of \$126.26 per car in accordance with the before-stated rate of \$107 per 30-foot car, plus the additional charge on each car exceeding 30 feet, and on March 16, 1908, complainant paid the amount of said bill to the local freight agent of said defendant at San Francisco; that thereafter it was discovered that the printed contract containing valuation at \$30 per head had not been changed to \$10 per head and defendants accordingly, on December 9, 1909, collected on each carload an additional \$25.25, or a total additional charge of \$580.75, in which sum reparation is asked; that on November 30, 1909, prior to the payment of this sum, attorney for defendant, Southern Pacific Company, wrote to complainant requesting payment of the additional rate and said:

Under the rulings of the Interstate Commerce Commission the shipper is required to pay and then apply for a refund. Should you choose to adopt this course, no opposition will be offered by the freight department and whatever papers they have in the matter will be available for you.

The original live-stock contract filed with the stipulation contains the following provisions:

* * * and the party of the first part covenants and agrees that the freight charges from point of shipment to final destination shall only be at the rate of \$107 per car, the same being a through rate, lower than the local rates which might lawfully be charged, and lower than the rate charged for shipments transported at carrier's risk, etc. * * *

In case of total loss of any of the live stock covered by this contract from any cause for which said first party shall be liable, it is agreed that the value thereof is the actual cash value of the same at the time and place of shipment, but in no case to exceed * * * \$30 for each cow * * * and in case of injury or partial loss the amount claimed shall not exceed the same proportion.

It was held by the Commission in *Southern Cotton Oil Co. v. S. Ry. Co.*, 19 I. C. C. Rep., 79, that complainant therein was entitled to reparation because the agent of defendant signed bills of lading with full knowledge that what the shipper desired was the rate on cotton linters released to a value of 2 cents per pound, and that, having this knowledge, the agent of the initial carrier neglected to indorse upon the said bills of lading any notation of the released valuation. The main fact in that case was that the shipper and the initial carrier were well aware of the actual value of the commodity and of the desire on the part of the shipper to obtain the lower rate named in the tariffs.

In view of the fact that it was the intention to write the released valuation of \$10 per head on the printed contract in place of the valuation of \$30 printed thereon, as shown by the insertion in printed

contract of the rate applicable only on such released valuation, the Commission is of opinion that the inadvertence of the carrier and the shipper should not operate to deprive complainant of the specified tariff rate, and that the rate charged was, under the circumstances, unjust and unreasonable, and that complainant is entitled to reparation in the sum of \$580.75, with interest from December 9, 1909. An order will be entered accordingly.

20 L. C. C. Rep.

No. 3378.

NATIONAL LEAGUE OF COMMISSION MERCHANTS OF THE
UNITED STATES

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted November 19, 1910. Decided February 13, 1911.

Rates on vegetables from Charleston, S. C., district to Buffalo, N. Y., and Pittsburg, Pa., found to be unreasonable to the extent that they exceed the combinations on Baltimore, Md. Reparation awarded.

R. E. Hanley for complainant.

R. Walton Moore for Atlantic Coast Line Railroad Company; Southern Railway Company; Richmond, Fredericksburg & Potomac Railway Company; and Washington Southern Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant corporation, consisting of commission merchants and produce dealers located in 28 cities of the United States and having its general business office at Buffalo, N. Y., filed its petition in its own interest as well as on behalf of certain of its members doing business as receivers and wholesale dealers. Complaint alleges unjust, unreasonable, and discriminatory rates on cabbage, potatoes, and other vegetables from the so-called Charleston, S. C., "truck-growing district," comprising, among other shipping points, Charleston, St. Andrews, Meggetts, and Yorges Island, S. C., to Buffalo, N. Y., and Pittsburg, Pa. Reparation is prayed for on certain shipments that moved during the period April 21 to June 10, 1910.

On April 1, 1910, just prior to the opening of the season for shipments from the Charleston district, the carload rates of defendants were changed as indicated in the following table, showing representative points, and made up by resolving the rates per package and the shipping weights into rates in cents per 100 pounds:

Rates in cents per 100 pounds.

From—	Potatoes.		Cabbage.		Vegetables, n. o. s.	
	Old rate.	New rate.	Old rate.	New rate.	Old rate.	New rate.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Charleston to Buffalo.....	39	50	54	65.8	64.7	84
Charleston to Pittsburg.....	38.4	49.2	53.4	64.2	63.5	80
Meggetts to Buffalo.....	39	50	54.2	65.8	64.7	84
Meggetts to Pittsburg.....	38.4	49.2	53.4	64.2	63.5	80

Complainant avers that as a result of these changes shipments to Buffalo and Pittsburg were largely diminished, and submits statement setting forth the extent to which the rates attacked exceed the Baltimore combinations. Defendants assert that the acreage of cabbage in the Charleston district was substantially less in 1910 than in 1909, and suggest that as the probable cause of falling off in shipments.

Subsequently (via the Atlantic Coast Line, September 20, and via the Southern Railway, October 1, 1910), and after the close of the shipping season, defendants reduced the carload rates to the following figures, which are somewhat lower than the combinations on Baltimore, and which are computed from package rates and weights:

Rates in cents per 100 pounds.

From—	Potatoes.	Cabbage.	Vegetables, n. o. s.
	Cents.	Cents.	Cents.
Charleston to Buffalo.....	38	56	72
Charleston to Pittsburg.....	34	54	68
Leggets to Buffalo.....	44	60	80
Leggets to Pittsburg.....	38	58	76

Defendants urge that complaint, as well as claim for reparation, originally was based upon the Baltimore combinations, and that, while no reparation should be awarded, the lowest rates that should in any event be taken as a measure of reparation are the combinations on Baltimore at the time the shipments moved.

Complainant insists that its petition suggested the Baltimore combinations merely as a measure of what would be reasonable rates, the language being "to the extent at least that they exceed the Baltimore combination," and that the rates for the future should not exceed the rates of October 1, and that reparation should be awarded on the basis of these figures. It asserts that even these rates are too high, as they are approximately the same as the rates from Jacksonville, Fla., on traffic from beyond, while Charleston is about 250 miles nearer the points of destination. This assertion is not correct, as the rates from Jacksonville from beyond are substantially the same as, or greater than, the Baltimore combinations from Charleston. In *Asparagus Growers Asso. v. A. C. L. R. R. Co.*, 17 I. C. C. Rep., 423, this same point was raised, and it was there said with reference to the Jacksonville rates:

It should be noted, however, that that rate is from base points, and that it is therefore simply a haulage charge, the gathering charge being included in the rates up to the base point.

The defendants state that through rates in excess of the Baltimore combinations are justified by circumstances and conditions incident
20 I. C. C. Rep.

to transportation to Baltimore which do not obtain as to transportation to Buffalo and Pittsburg, and that the old rates were too low. We do not find justification for through rates from Charleston to Buffalo or to Pittsburg that are higher than the aggregate of the intermediate rates based upon Baltimore.

As was stated in *Asparagus Growers' Asso. v. A. C. L. R. R. Co.*, *supra*, rates from Charleston generally are somewhat affected by water competition. This competition is conceded, but it must have been taken into consideration in constructing the rates to Baltimore, as well as the rates to Buffalo and to Pittsburg, which were in effect prior to April 1.

Defendants refer to *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552, and the rate to Ohio River crossings of 30 cents per crate on vegetables, therein approved, an increase of 5 cents per crate, and urge this as one of the reasons for the increase in the rates from Charleston, which are to an extent related to the rates from Florida base points. However, as has been seen, the Baltimore combination rates are approximately as high from Charleston as are the rates from Jacksonville on shipments from beyond.

The suggestion of complainant that Buffalo and Pittsburg are at a disadvantage by comparison with Rochester, N. Y., needs no more than passing reference, since it is shown that there were practically no shipments to Rochester via either the Atlantic Coast Line or the Southern Railway for the seasons of 1909 and 1910. That competition is therefore inconsiderable.

The tariffs in effect prior to April 1 and those of April 1 named the same rates from branch-line points as from Charleston, but the subsequent tariffs name through rates from the branch-line points higher than the rates from Charleston. Rates from branch-line points to the Ohio River are higher than rates from Charleston to the Ohio River, but the same relative differences have not been observed in the construction of the through rates to Buffalo and to Pittsburg. In consideration of the extra service performed and the additional expense incident to traffic from branch lines, the Commission does not here regard it as improper to charge reasonably more from such points than from main-line points. We see no reason, however, for any higher differentials on shipments to Buffalo or Pittsburg than on like shipments to Baltimore.

The through rates applied via Virginia gateways prior to April 1 were practically the combinations on the Ohio River, but this basis was not adhered to in the construction of the two subsequent sets of rates with which we have to deal. Therefore, while the relationship to the Ohio River combinations should be considered, it can not be

regarded as the sole controlling influence in the construction of these rates.

Necessity for, or sufficient justification of, the full measure of the advances made on April 1 has not been established. On the contrary, the final voluntary reductions, which are explained by the defendants as the result of pressure from complainant and possibly other shipping interests, while forming no conclusive or controlling presumption, suggest some reason for viewing the rates of April 1 as too high.

The conclusion of the Commission is that the carload rates charged from Charleston from and after April 1, 1910, were unreasonable and unjust to the extent that they exceeded the combinations on Baltimore, which were as follows:

Rates in cents per 100 pounds.

To—	Potatoes.	Cabbage.	Vegetables, n. o. s.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Buffalo.....	44.1	59.3	73
Pittsburg.....	43.1	58.3	72

and that the carload rates charged from Charleston district branch-line points, from and after April 1, 1910, were unreasonable to the extent that they exceeded the said Charleston rates made in combination on Baltimore, plus the following differentials in cents per 100 pounds: From Meggetts, Wadmalaw River, and Yonges Island, potatoes, 2; cabbage, 2.5; vegetables, n. o. s., 8; from St. Andrews, potatoes, 2; cabbage, 2.5; vegetables, n. o. s., 4.

For the future defendants' carload rates on these commodities from the branch-line points named to Buffalo or Pittsburg should not exceed the carload rates from Charleston by more than the differentials above shown. The rate from Charleston to Buffalo or Pittsburg via the lines of defendants should not in any case exceed the combination on Baltimore.

These rates are here stated in cents per 100 pounds, but that is not to be taken as indicating any objection to the publication of specific rates per package and fair estimated weights per package which reach the same result.

Such of complainant's members as have since April 1, 1910, made carload shipments on basis of higher rates than those herein found to be reasonable are entitled to reparation, and may submit to defendant initial carriers for confirmation statements of such shipments via their respective lines. Such statements, when confirmed by said defendants, may be submitted to the Commission and orders will be entered authorizing payment.

An order will be issued in accordance with these views.

No. 8189.
E. P. STACY & SONS
v.
OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted January 30, 1911. Decided February 13, 1911.

Rates on apples and other deciduous fruits from Utah points to points in North Dakota, made in full combination on Silver Bow, Mont., and in excess of rates from same points of origin to same destinations via Omaha, found to be unreasonable. Lower rates via Silver Bow prescribed.

F. A. McGillis for complainant.

Edson Rich for Oregon Short Line Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant corporation, engaged in the purchase, sale, and shipment of fruits and vegetables, alleges that the short, direct, and expeditious route for transportation of apples and other deciduous fruits from Logan, Brigham, and Hot Springs, Utah, to points on the Northern Pacific Railway in North Dakota is via Silver Bow, Mont., and complains that defendants' present rates upon such shipments via Silver Bow, made in full combination on that point, are unjust, unreasonable, and discriminatory. Violations of sections 1 and 3 of the act to regulate commerce are alleged, in that defendants have failed or refused to establish reasonable through rates via Silver Bow upon request and demand therefor.

The Northern Pacific Railway Company filed no answer to the complaint and made no appearance at the hearing.

All rates referred to herein, unless otherwise stated, are in cents per 100 pounds. The distances given, while not exact, closely approximate the actual mileage.

It appears that defendants are parties to a rate of \$1.25 on apples and other deciduous fruits in carloads from Brigham, Logan, and Willard, Utah, to certain North Dakota points, including Fargo and Bismarck, via Omaha and St. Paul or Minnesota Transfer. The

distance via this route from Brigham, the most representative shipping point, to Fargo, a representative destination, is 1,660 miles. The distance from Brigham to Fargo via Silver Bow is 1,250 miles, and the rate on apples, carloads, is \$1.25 made up—60 cents Brigham to Silver Bow, and 65 cents Silver Bow to Fargo. The rate on deciduous fruits other than apples is \$1.82½ made up—70 cents Brigham to Silver Bow, and \$1.12½ Silver Bow to Fargo.

The Northern Pacific rate on apples, carloads, from North Yakima, Wash., to Fargo, is 75 cents, and on other deciduous fruits the rate is \$1.12½. This distance is 1,520 miles.

The Great Northern rates from Wenatchee, Wash., to Fargo are, on apples, 75 cents; other deciduous fruits, \$1.12½. This distance is 1,405 miles.

The joint rates of the Oregon Railroad & Navigation Company and the Northern Pacific from Hood River, Oreg., to Fargo are, on apples, 80 cents; other deciduous fruits, \$1.25. This distance is 1,650 miles.

The transcontinental lines, including defendants, carry a rate on deciduous fruits from California shipping points to Fargo and Grand Forks, N. Dak., via Omaha and the Twin Cities, \$1.35.

Complainant alleges that failure to establish rates from the Utah shipping points to the North Dakota points of destination via Silver Bow, not exceeding the rates from the same points of origin to the same destinations via the Missouri River gateway, is unjustly discriminatory against complainant as a dealer, against the Utah shipping points, and against the North Dakota points of consumption.

It appears that some efforts have been made by the defendants to agree upon and establish lower rates via the Silver Bow gateway. They were willing to establish a rate of \$1.25, but they were unable to agree upon the divisions of same, or as to the North Dakota points that should be included as destinations thereunder.

Defendant Oregon Short Line Railroad now expresses willingness to establish, via Silver Bow or Butte, a rate of \$1.25 on apples and other deciduous fruits from the Utah producing points in question to points on the Northern Pacific in North Dakota as far east as Fargo, and apply that rate as far west of Fargo on the Northern Pacific as it will go before it exceeds the combination on Silver Bow or Butte, and to divide the earnings on a mileage prorate. As has been stated, although the Northern Pacific and Oregon Short Line were unable to agree upon the establishment of these rates, the Northern Pacific has neither answered nor appeared in this proceeding.

It appears that ordinarily defendants have lower rates on apples than on other deciduous fruits, but where apples are given a lower rate they are subject to higher minimum weight. Where there is a separate rate on apples the minimum weight is 30,000 pounds, while

on other deciduous fruits, and on deciduous fruits including apples, the minimum is from 20,000 to 24,000 pounds. Frequently where the rate is the same a higher minimum applies to apples.

It has been often said that distance, while an important factor in rate adjustments, can not be accepted as the sole, or necessarily controlling factor. In the shipment of fruit distance, time in transit, and dispatch are of prime and more than ordinary importance. These commodities must be moved at the proper season, they are easily injured by extremes of temperature, they must move promptly and expeditiously in order to reach points of consumption in desirable and proper condition, and the best facilities and widest opportunities for their movement via available lines should be provided, within the limits of reasonable compensation for the service performed.

We think that complainant is entitled to the relief prayed for, and, upon the whole record, we find that defendants should be required to establish and maintain for a period of two years a joint rate on deciduous fruits in carloads, including apples, from Hot Springs, Utah, via Silver Bow or Butte, Mont., to Grand Forks, N. Dak., not in excess of \$1.25 per 100 pounds, and to also establish and maintain joint rates on the same commodities in carloads from Willard, Brigham, and Logan, Utah, to Grand Forks, N. Dak., via Silver Bow or Butte, Mont., not in excess of \$1.25 per 100 pounds, and to also establish and maintain joint rates on the same commodities in carloads from Hot Springs, Willard, Brigham, and Logan, Utah, via Silver Bow or Butte, Mont., to Fargo, Wahpeton, Valley City, Jamestown, Bismarck, and other intermediate points on the Northern Pacific Railway in North Dakota, not exceeding in any case the rate above prescribed from Hot Springs, Utah, to Grand Forks, N. Dak., and not exceeding in any case the combination of intermediate rates on Butte or Silver Bow. The minimum carload weights in connection with the above rates shall not exceed 30,000 pounds for straight carloads of apples and 24,000 pounds for other shipments.

Points on the Northern Pacific Railway in Montana may, and probably ought to be, given rates via Butte or Silver Bow from the Utah shipping points named, which in no case exceed either the rate to any North Dakota point or the combination of intermediate rates on Silver Bow or Butte.

On a shipment via Butte to Fargo the Northern Pacific gets a haul of 875 miles, and on a shipment via St. Paul to Fargo, 250 miles. On a shipment via Butte to Bismarck its haul is 680 miles, and on a shipment via St. Paul to Bismarck, 445 miles. Obviously, its earnings will be greater on shipments moving via Silver Bow or Butte than on shipments moving via St. Paul, and the earnings under the rates herein prescribed via the Butte or Silver Bow gateway will be as favorable to it, service considered, as those under its voluntary rates

via St. Paul, or from North Yakima or other Washington or Oregon points, and will be fairly and reasonably compensatory.

Presumably these rates as established will blanket the points of origin between and including Hot Springs and Logan, Utah, and a substantial portion, if not all, of the North Dakota points referred to. The question of divisions of these rates is of course now left to the defendants to agree upon. It may be that their divisions will depend somewhat upon whether the traffic is exchanged at Silver Bow or at Butte. The Oregon Short Line haul to the junction with the Northern Pacific would be the same on a shipment to Fargo as a shipment to Bismarck, while the Northern Pacific haul would be considerably greater to Fargo than to Bismarck. The Oregon Short Line haul will be somewhat longer on shipments from Hot Springs or Brigham than on shipments from Logan. An arbitrary basis of divisions would ignore these differences in the lengths of the hauls. A mileage prorate basis of divisions would divide the earnings according to the service actually performed by each carrier. If defendants are unable to agree upon the divisions of the rates herein prescribed the Commission will, upon further hearing, determine that question.

An order will be entered in accordance with these views.

No. 3559.

B. E. BLAKE & SON HARDWARE & MANUFACTURING
COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted December 1, 1910. Decided February 13, 1911.

Under the circumstances disclosed by the record the rate charged complainant on its shipments of wrought-iron pipe from Youngstown, Ohio, to Liberal, Kans., is not found unreasonable in and of itself, or in violation of section 8 of the act.

Clarence A. Toolen for complainant.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant is a corporation engaged in operating a hardware and implement store at Liberal, Kans. It complains to this Commission that the defendants have exacted on two shipments of wrought-iron pipe from Youngstown, Ohio, to Liberal, Kans., an unreasonable rate as compared with the rate on the same commodity to Texola, Okla., and that Liberal is discriminated against as a result.

Texola is served by the same carrier which delivered this traffic at Liberal, but is not upon the same line of that carrier, so that while traffic moving from Youngstown to Texola would be handled by the same carriers which would transport it to Liberal, it would not move, during a considerable portion of the journey, over the same line. The only evidence to show either the unreasonableness of the rate or the discrimination against Liberal was the fact that the distance from Youngstown to Liberal and Texola was substantially the same, and that the physical cost of handling the traffic was about the same.

The defendants contend that competition at certain Texas points reflects itself to these Oklahoma points, and that to sustain the position of the complainant would be to subvert the entire rate structure in that section, and such appears to be the fact.

Under these circumstances we can not hold that the rate charged on these shipments to Liberal is unreasonable in and of itself, or unreasonable as being in violation of section 3 of the act. Therefore this complaint must be dismissed, and it is so ordered.

20 I. C. C. Rep.

No. 3660.

WHEELER & MOTTER MERCANTILE COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

No. 3661.

C. D. SMITH DRUG COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY.

Submitted December 21, 1910. Decided February 13, 1911.

Proportional third class rate applicable only on shipments from Atlantic seaboard territory, established under order of the Commission in the *Burnham, Hanna, Munger case*, 14 I. C. C. Rep., 299, did not, and does not, apply to the movement of cotton piece goods, for which carriers maintained a commodity rate.

Herbert G. Wilson, Horace G. Krake, George T. Bell, E. J. McVann, and John H. Atwood for complainants.

C. C. Wright for Chicago & North Western Railway Company.

Chester M. Dawes for Chicago, Burlington & Quincy Railroad Company.

R. A. Brown and S. E. Stohr for St. Joseph & Grand Island Railway Company.

James C. Jeffery and H. J. Campbell for Missouri Pacific Railway Company.

N. S. Brown for Wabash Railroad Company.

William Ellis and F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

T. J. Norton and D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

Winston, Payne, Strawn & Shaw, by Blackburn Esterline, for Chicago Great Western Railroad Company and Chicago & Alton Railroad Company.

20 I. C. C. Rep.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

In *Burnham, Hanna, Munger Dry Goods Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C. Rep., 299, the Commission found the through class rates from Atlantic seaboard territory to the Missouri River, made in combination on the Mississippi River, applicable on the first five classes, to be unreasonable. The through rates were declared to be unreasonable because the portions applicable west of the Mississippi River were unreasonable, and those portions were reduced.

The Commission's order, first made on June 24, 1908, and finally entered to become effective November 10, 1908, was resisted and, pending outcome of litigation, did not become effective until October 26, 1910.

Two contentions are now presented by complainants and other shippers under these rates:

(a) That because of the manner in which the proportional rates prescribed by the Commission were finally published, the proportional third class rate of 30 cents became properly applicable from the Mississippi River to the Missouri River on shipments of cotton piece goods from Atlantic seaboard territory, instead of the commodity rate of 35 cents, and:

(b) That the reduction in the third class rate as a proportional on shipments moving from Atlantic seaboard territory to the Missouri River included like reduction in the rate on cotton piece goods from the date upon which the Commission's order would have become effective but for the litigation.

These questions have been submitted in hearing and on briefs, the hearing having been had under this docket, which contains a large number of claims for reparation on shipments which moved subsequently to the date upon which the Commission's order would have become effective but for the litigation, and prior to the date upon which the rates prescribed by the Commission were made effective in the tariffs.

In June, 1903, W. T. L. Rules Circular rated cotton piece goods third class, with provision that that rating would not apply to Missouri River points and other territory provided with commodity rates, the commodity rates in such instances to govern. In May, 1908, cotton piece goods were given third class rating without the specification as to commodity rates taking precedence, and that rating was carried through succeeding issues until August 1, 1909, when provision was again inserted to the effect that third class rating would apply except where commodity rates are named.

From long before November 10, 1908, down to the present time the commodity rate on cotton piece goods from the Mississippi River

to the Missouri River has been 35 cents, and the third class rate has also been 35 cents, except as it was reduced by order of the Commission, limited in application to shipments from Atlantic seaboard territory; so that, except as just stated, the changes in tariffs that are referred to did not effect change in either the class or commodity rate.

W. T. L. Tariff, I. C. C. No. 741, effective February 4, 1907, contained class and commodity rates and provided that "when the commodity rates and class rates conflict the former will govern." This tariff was governed by Western Classification and contained an exception which placed cotton piece goods in third class, but it was stated that this rating "will not apply to or from points provided with commodity rates, the commodity rates in such instances to govern."

W. T. L. Tariff, I. C. C. No. A-2, effective May 21, 1908, canceled conflicting portions of No. 741, and named commodity rate on cotton piece goods between Mississippi River crossings and Missouri River points, which applied both as a local rate and as a proportional rate on shipments from beyond.

W. T. L. Tariff, I. C. C. No. A-7, canceled I. C. C. No. A-2, effective November 21, 1908, and contained local, joint, and proportional rates on classes and commodities. This tariff authorized the use of either the class rate or the commodity rate, whichever made lower charges. It was governed by Western Classification, Becker's I. C. C. No. 3, and W. T. L. Circular, I. C. C. No. A-18, the latter taking precedence over the former. W. T. L. Circular, I. C. C. No. A-18, effective November 20, 1908, provided rating on cotton piece goods, third class, without the proviso "except where specific commodity rates are provided."

W. T. L. Tariff, I. C. C. No. A-45, effective May 15, 1909, canceled I. C. C. No. A-7 and I. C. C. No. 741, and contained local, joint, and proportional class and commodity rates, with authority to use whichever resulted in the lower charge. It was governed by Western Classification, Becker's I. C. C. No. 4, and W. T. L. Circular, I. C. C. No. A-43, the latter taking precedence over the former. W. T. L. Circular, I. C. C. No. A-43, rated cotton piece goods third class. On August 1, 1909, supplement to this issue restored the proviso that this rating would not apply when commodity rates are published.

W. T. L. Tariff, I. C. C. No. A-90, canceled I. C. C. No. A-45, effective November 15, 1909, and contained local, joint, and proportional rates on classes and commodities, authorizing the use of whichever rate made the lower charge. It was governed by Western Classification, Becker's I. C. C. No. 5, and W. T. L. Circular No. A-89, the latter taking precedence over the former. W. T. L. Circular, I. C. C. No. A-89, rated cotton piece goods third class, "except where specific com-

modity rates are published." W. T. L. Tariff, I. C. C. No. A-115, canceled I. C. C. No. A-90, effective May 1, 1910, and is still in effect. It contains both class and commodity rates, which are to be used alternatively to secure the lowest charge. This publication is governed by Western Classification, Becker's I. C. C. No. 6 and W. T. L. Circular, I. C. C. No. A-122, effective May 21, 1910, the latter taking precedence over the former. W. T. L. Circular, I. C. C. No. A-122, rates cotton piece goods third class, "except where specific commodity rates are published."

As previously stated, the Commission's order reducing the third class rate from Mississippi River crossings to the Missouri River points, from 35 cents to 30 cents on shipments from Atlantic seaboard territory, would have become effective November 10, 1908, had it not been enjoined. It finally became effective in the tariff October 26, 1910.

On June 24, 1908, and on November 10, 1908, defendants had a specific commodity rate on cotton piece goods applicable both as a local rate and as a proportional rate on shipments from beyond of 35 cents from Mississippi River crossings to the Missouri River. Beyond question that was the lawful rate on those dates. On November 21, 1908, in W. T. L. Tariff, I. C. C. No. A-7, an alternative rule for the application of class or commodity rates as shown in that tariff, whichever resulted in the lower charge, was provided, and has been continued to the present time.

If defendants had on November 10, 1908, in compliance with the Commission's order established third class rate of 30 cents applicable on shipments from the Atlantic seaboard and had not made it subject to the alternative use of the class and commodity rates, the commodity rate of 35 cents would still have lawfully applied on cotton piece goods.

Effective October 26, 1910, after the Commission's order had been upheld by the Supreme Court, defendants published in a separate tariff, W. T. L., I. C. C. No. A-170, a proportional third class rate of 30 cents from Mississippi River crossings to the Missouri River, applicable only on shipments from Atlantic seaboard territory. This publication created this situation. W. T. L. Tariff, I. C. C. No. A-115, in effect when I. C. C. No. A-170 was issued, named third class proportional rate of 35 cents from Mississippi River crossings to the Missouri River, applicable on all shipments, including those from Atlantic seaboard territory, and Tariff I. C. C. No. A-170 named a proportional third class rate from and to the same points applicable only on traffic from Atlantic seaboard territory, of 30 cents. Both of these tariffs were governed by the same classification publications. This conflict should not have been created and it should be at once

removed. It does not, however, affect the issue here. The lower rates in I. C. C. No. A-170 are the lawful rates on class rate shipments from Atlantic seaboard territory.

From prior to November 10, 1908 (the date upon which the Commission's order would have become effective but for the injunction), to August 1, 1909, the exception which took precedence gave specific third class rating to cotton piece goods. On August 1, 1909, the exception to this rating, "except where specific commodity rates are provided," was again attached, and has been continued to the present time. November 21, 1908, the alternative of class or commodity rates was tendered, and from that time to August 1, 1909, the alternative of the use of third class rate was not restricted.

It is therefore seen that from prior to November 10, 1908, to date, defendants have had a specific commodity rate on cotton piece goods from Mississippi River crossings to the Missouri River of 35 cents, with alternative of the use of third class rate as shown in the same tariff, and subject to the terms of the classification and exceptions thereto for the period subsequent to November 21, 1908.

Cotton piece goods are rated first class in Western Classification, and were given third class rating only in the exceptions to that Classification. It appears that the third class rate and the commodity rate on cotton piece goods between Mississippi River crossings and the Missouri River have for a long time been the same. Since June, 1903, except between May 20, 1908, and August 1, 1909, the tariffs contained specific provision that the third class rate would not apply to cotton piece goods between points where commodity rates were provided, and, as has been seen, defendants had a commodity rate on cotton piece goods between the rivers during all the time covered by this controversy. It, therefore, seems apparent that it was not the intent to include cotton piece goods moving from the Mississippi River to the Missouri River in the third class rating.

The Commission's tariff regulations effective January 23, 1907, contained, and have continuously since contained, a rule that the naming of a commodity rate on any article takes that article out of the class rates between the same points. This rule, however, does not prevent the alternative offering and use of class and commodity rates contained in the same tariff.

If the proportional class rates prescribed by the Commission had been published effective November 10, 1908, applicable on class rate traffic from Atlantic seaboard territory, subject to the alternative use of class or commodity rates contained in the same tariff, and no other or different provisions had been made for the classification ratings, the time during which the third class rate of 30 cents would have applied to shipments of cotton piece goods from Atlantic seaboard

territory to the Missouri River was the period between November 21, 1908, and August 1, 1909.

If, however, as might have been done under the Commission's order, and as in fact was done when the rates were published effective October 26, 1910, the proportional class rates prescribed by the Commission had been published as effective November 10, 1908, applicable on class rate traffic from Atlantic seaboard territory and had not been made subject to the alternative use of class or commodity rates, and if the classification provisions had been as they have been there would have been no period subsequently to November 10, 1908, when such proportional class rates would have applied to cotton piece goods moving from Atlantic seaboard territory to the Missouri River. It has not been suggested that the manner in which defendants published the rates prescribed by the Commission failed in any way to carry out the purpose and the terms of the order. As has been seen, the only rate on cotton piece goods in effect on November 10, 1908, was the commodity rate, which subsequently was offered in the alternative with the third class rate. Possibly if defendants had established on November 10, 1908, the third class rate of 30 cents they might still have offered it in the alternative, but there is no evidence of such intent, and we can not assume that they would have done so.

If a finding were reached that the change in the class rate ordered by the Commission invalidated the commodity rate on cotton piece goods it must be upon grounds which would also invalidate the commodity rate if, as a result of similar order, the class rate were made higher than the commodity rate. Obviously, if the third class rate had been increased, shippers would insist, and we think properly so, upon the right to the lower commodity rate on cotton piece goods. If the change in the class rate necessarily effects a change in the commodity rate on cotton piece goods, why would it not operate in the same manner as to all other commodity rates?

The maintenance for a long period of an exception to the classification which took cotton piece goods from the first class and rated them as third class (except where commodity rates were provided), and the contemporaneous maintenance of a commodity rate on cotton piece goods which was the same as the third class rate, and the offer of the alternative of such class or commodity rate, whichever resulted in the lower charge, apparently led to a general acceptance of the view that the movement of cotton piece goods was controlled by the third class rate. Indeed, we are told that at a time when the third class rate was lower than the commodity rate on cotton piece goods the third class rate was applied. But that was at a time when but little regard was paid to the provisions of tariffs. Doubtless it

was the intention of complainants in the *Burnham-Hanna-Munger case, supra*, to have their complaint include the rate on cotton piece goods, but that case was confined to the rates on the first five classes, and, although in the proceedings some mention was made of rates on cotton piece goods, the issue tried, determined, and covered by the Commission's order was the application of the class rates on the first five classes to the traffic then subject thereto and moving thereunder. The questions now submitted do not present any phase of the reasonableness of a commodity rate on cotton piece goods that is higher than the third class rate and no opinion as to the reasonableness of that commodity rate is expressed.

It seems pertinent to suggest that if an exception sheet takes cotton piece goods from the first class and rates them as third class, the contemporaneous maintenance of a commodity rate on cotton piece goods that is the same as the third class rate serves no good purpose. It simply increases the probability of complications arising and contributes to the likelihood of error or oversight in tariff construction.

It therefore appears that despite some changes in phraseology in defendants' tariffs and some oversights, ambiguities, involved methods, or errors which have led or might lead to misunderstanding and complication, and which emphasize the necessity for more simplicity and clearness in tariffs, the defendants have maintained through the entire period covered by the two contentions here considered, commodity rates applicable between the Mississippi River and the Missouri River on cotton piece goods moving from Atlantic seaboard territory to the Missouri River, and that neither before nor since the publication of the rates prescribed by the Commission in the *Burnham-Hanna-Munger case, supra*, has the third class rate been properly or lawfully applicable to such shipments, except under the specific offering of alternative rates under which the third class rate and the commodity rate were the same. As to the rate applicable since October 26, 1910, this conclusion differs from informal expression previously made in a letter at a time when all of the technical facts brought out at the hearing were not at hand.

No. 8384.
GEORGIA-CAROLINA BRICK COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted November 25, 1910. Decided February 13, 1911.

The reduction by carriers of a rate via a long route to equal the rate via the short line is not of itself conclusive evidence of the unreasonableness of the higher rate, and claims for reparation based upon the ground that the rate was reduced to meet such short-line rate must be denied. *Meneses Lumber Company v. T. & P. Ry. Co.*, 15 I. C. C. Rep., 49, and *Commercial Coal Co. v. B. & O. R. R. Co.*, 15 I. C. C. Rep., 11, reaffirmed.

G. R. Coffin for complainant.

R. Walton Moore for Southern Railway Company and Seaboard Air Line Railway.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of brick at Augusta, Ga. Its petition, filed July 11, 1910, attacks the reasonableness of a combination rate of \$2.50 per 1,000 brick charged on three carloads of brick shipped September 10 and 11, 1908, from Augusta, Ga., to Calhoun Falls, S. C., via lines of defendants. It is alleged that a reasonable rate for this service would have been \$1.40 per 1,000; that at the time these shipments moved such a rate was in effect via the Charleston & Western Carolina Railway, and has since been published by defendants. Reparation in the sum of \$42.90 is asked.

Between Augusta, Ga., and Calhoun Falls, S. C., the short-line distance is 68 miles, over the Charleston & Western Carolina Railway. Shipments to Calhoun Falls, delivered to the Southern Railway at Augusta, must be carried by the Southern through Columbia to Greenwood, S. C., a distance of 166 miles, there delivered to the Seaboard Air Line, and transported by that carrier a distance of 29

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miles to Calhoun Falls, a total haul of 195 miles. Via this long route there was no joint rate and a combination of intermediate rates, made up of \$1.40, Augusta to Greenwood, and \$1.10, Greenwood to Calhoun Falls, was charged. It is admitted by defendants that the correct combination was \$2.40, the rate from Greenwood to Calhoun Falls being \$1. Tender of the resulting overcharge has been made to complainant by defendants but has not been accepted. This amount may be refunded without an order of the Commission.

Via the short line, Charleston & Western Carolina Railway, the rate was, and for about five years had been, \$1.40 per 1,000 brick. Via defendants' lines the combination rate of \$2.40 had been in effect for several years, but, on March 28, 1909, more than six months after this movement, a joint rate of \$1.40 was published to meet the short-line competition.

Complainant had a contract for about one and a half million brick to be shipped to Calhoun Falls. Only three cars, of 13,000 brick each, appear to have been sent via lines of defendants. This would indicate that more than 100 cars were sent via the short line. Complainant stated that the commercial agent of the Southern Railway solicited this business, saying nothing about the rate. Its prayer for reparation is based solely upon the ground that the rate via the short line was \$1.40 and that such rate was later established via lines of defendants. No evidence was offered to prove that the rate of \$2.40 per 1,000 brick was unreasonable for the service rendered. At an estimated weight of 5 pounds per brick, the rate of \$2.40 per 1,000 brick is equal to 4.8 cents per 100 pounds, which for a distance of 195 miles produces a per-ton-mile revenue of 4.9 mills. The rate of \$1.40 per 1,000 via the Charleston & Western Carolina equals 2.4 cents per 100 pounds, and for a distance of 68 miles yields a per-ton-mile revenue of 7 mills.

The Commission has repeatedly held that a carrier with a long route is not obliged as a matter of law to meet the rate of the short-line competitor, and that the reduction of a rate applicable via a long route to meet the rate in effect via a shorter and more direct route is not of itself conclusive evidence of the unreasonableness of the higher rate. *Menefee Lumber Co. v. T. & P. Ry. Co.*, 15 I. C. C. Rep., 49; *Commercial Coal Co. v. B. & O. R. R. Co.*, 15 I. C. C. Rep., 11. In the *Menefee case* the Commission said:

If reparation were granted in this case it would go far to support the theory that a carrier may not voluntarily reduce its rate without being liable for damages on all past shipments, a theory which can not be accepted by the Commission.

Again, as we have said in Conference Rulings:

Any other course of action is demoralizing, in that it enables the carrier, before its own lower rate has become effective, to assure shippers that they may

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ship by its line notwithstanding its higher rate and afterwards secure reparation on basis of the lower rate of its competitor. Where there is a difference in rates between two points over different lines, shippers must understand that they may get the benefit of the lower rate only by sending their merchandise over the line publishing the lower rate. *Rule 200, Bulletin No. 4.*

Upon consideration of this record, we find that defendants' rate of \$2.40 per 1,000 brick is not shown to have been unreasonable or excessive and that complainant, therefore, is not entitled to reparation. The complaint will be dismissed and an order will be entered accordingly.

20 I. C. C. Rep

No. 3333.

WEST OREGON LUMBER COMPANY

v.

ASTORIA & COLUMBIA RIVER RAILROAD COMPANY
ET AL.

Submitted November 8, 1910. Decided February 13, 1911.

A carrier does not misroute a shipment when the routing instructions given by the shipper are observed, and it is not liable to the shipper for charges applicable over such route in excess of the charges over another available route.

Joseph N. Teall for complainant.

James B. Kerr for Astoria & Columbia River Railroad Company.

A. C. Spencer for Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; and Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of lumber and other forest products, with its principal place of business at Portland, Oreg. The petition, filed June 16, 1910, alleges that charges collected for carriage of a carload of fir lumber from Clatskanie Junction, Oreg., to DeBeque, Colo., were unreasonable because the shipment was misrouted by defendants.

The shipment moved December 25, 1909. By direction of complainant the bill of lading specified the route as follows: "A. & C., O. R. & N., O. S. L., U. P.," and did not name any rate. It was understood by the parties that the initials A. & C. meant Astoria & Columbia River Railroad Company; that O. R. & N. meant Oregon Railroad & Navigation Company; that O. S. L. meant Oregon Short Line Railroad Company; and that U. P. meant Union Pacific Railroad Company. The movement was over the lines thus designated, via Portland and Huntington, Oreg., Granger and Cheyenne, Wyo., and Denver, Colo. There was no joint rate at the time via Cheyenne and Denver and the charges exacted were based on a rate of 40 cents

per 100 pounds from the point of origin to Denver, plus a rate of 30 cents per 100 pounds from Denver to destination. There was a joint rate of 40 cents via Salt Lake City, Utah, a much shorter distance, but that route did not include any part of the line of the Union Pacific.

Complainant contends that, notwithstanding the instructions above stated, it was the duty of defendants to transport the shipment via the shorter route over which the joint rate applied. Complainant's witness, who specified the routing, testified that three other carloads of lumber were shipped by his company about the same time and to the same territory; that the routing instructions were the same as to all four shipments; that defendants transported two of the shipments via Salt Lake City, and when he heard that the third had gone by way of Denver he at once requested that the fourth be diverted in transit, so as to move via Salt Lake City, which was done. He testified further that the natural and reasonable route for the shipments was via Salt Lake City, and that, as the designated lines are parts of what is known as the Harriman system, he fully expected the shipments to be carried via that route. He admitted, however, that he was careless in billing the shipments, and that the use of the initials "U. P." was a mistake on his part. There was no other route than that taken by this carload over which the Union Pacific Company could have participated in the transportation at a lower rate than was charged. No evidence was introduced which tends to show that the rate was in itself unreasonable. It can not be questioned that as to the shipment here involved the defendants literally observed complainant's instructions.

On the facts the case falls clearly within the ruling of the Commission in *Poor Grain Co. v. C., B. & Q. R. R. Co.*, 12 I. C. C. Rep., 418, 469, frequently reaffirmed, to the effect that where a shipper gives specific instructions as to the route his shipment shall take, the carrier must observe such instructions and is relieved of the duty of ascertaining whether or not the shipment could be forwarded via another route at a lower rate. The complaint will be dismissed.

20 I. C. C. Rep.

No. 3403.

RIVERSIDE MILLS

v.

CHARLESTON & WESTERN CAROLINA RAILWAY COM-
PANY ET AL.

Submitted November 25, 1910. Decided February 13, 1911.

On account of damage to complainant's mill and stock, occasioned by flood, complainant was unable to receive and unload promptly certain inbound shipments, although carriers were in a position to make deliveries; *Held*, That the assessment of demurrage charges was not unreasonable or unjust.

R. J. Southall for complainant.

R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of cotton waste and has its factory and principal office at Augusta, Ga. Its petition, filed July 19, 1910, alleges that the collection by defendants of demurrage charges, aggregating \$688, upon cars delivered at its factory from points outside of Georgia, between August 25 and September 29, 1908, was unreasonable, and it asks for refund thereof.

During the period stated Augusta was visited by a flood of such proportions that for a time all industries along the water front were paralyzed and for a shorter period the defendants were unable to effect delivery of cars. The tariffs provided for assessment of demurrage charges of \$1 per car per day after expiration of a prescribed free time. At the hearing complainant did not attack the demurrage charge of \$1 per car as unjust of itself, but stated that under the circumstances the assessment of the charge was unreasonable. As the delivering carriers were compelled to pay car rental at the rate of 25 cents per day to the lines owning the equipment delivered to complainant, it reduced the claim for reparation to basis of 75 cents per car per day, or to a total sum of \$516.

At the time of the flood, August 26 to 29, 1908, complainant had stored in its warehouse some 40,000 bales of cotton waste. The receding water left deposits of silt and mud. Complainant's mill machinery was disabled, about 1,000 of its bales of cotton waste were swept down the river, and some 10,000 bales stored in the lower floors were damaged. Complainant was unable to remove these on account of the water which rapidly inundated the basement of the mill, and rose to a height of 30 inches on the mill floor. Due to the fact that other industries were similarly injured, labor was scarce and storage room at a premium.

The sidetrack leading to complainant's mill was undermined and partially destroyed. This track was built by the Augusta Terminal Railway Company (whose property is now owned by the Charleston & Western Carolina Railway Company) under a contract providing for maintenance by the railway company. Until repairs to the track were completed, about September 1 or 2, 1908, no cars could be set into complainant's mill, and no demurrage charges were assessed until after defendants were in a position to make delivery on the sidetrack. Complainant concedes that the cars were not received in such numbers as to preclude prompt release had it been able to unload them.

All parties agreed that the period for which the demurrage charges were assessed covered only the time during which the defendants were able to make delivery; that complainant did not receive the inbound shipments, because it had first to take care of its damaged goods and repair the injury to its mill caused by the flood; that the demurrage accrued on account of complainant's inability to unload the cars promptly, due to scarcity of labor and lack of storage facilities for the material already on hand; and that proper notice of arrival was given by the carriers.

The tariffs effective during the period for which demurrage was assessed provided that no demurrage charges would be collected—

When the condition of the weather during the time prescribed for loading or unloading cars or removal of freight is such as to render it impossible to release cars or remove freight without serious damage to the freight.

The rule as amended April 1, 1910, and now in effect, provides that no demurrage charges will be collected when the detention is caused by:

Weather Interference.

(1) When the condition of the weather during the prescribed free time is such as to make it impossible to employ men or teams in loading or unloading, or impossible to place freight in cars, or to move it from cars, without serious injury to the freight.

(2) When shipments are frozen so as to prevent unloading during the prescribed free time, or when, because of high water or snowdrifts, it is impossible to get to the cars for loading or unloading during the prescribed free time.

The latter rules are a revision of the former in more definite terms.

It can not be said that weather interference as defined in either of the rules was responsible for detention of the cars. The trouble lay inside the mill itself. During the period when the carriers were unable to deliver cars at the mill no demurrage was charged. As soon as they could do so defendants tendered the shipments which had arrived. These might have been handled more expeditiously, except for the damage to complainant's mill, for which the defendants were in no wise responsible. Had complainant unloaded these shipments it would have been forced to seek other storage space for them. Although we are not informed of the cost of such storage, it seems fair to assume that the use of the carriers' equipment was, under the circumstances, to complainant's advantage.

Upon consideration of the facts disclosed by the record, we are of opinion that the assessment of the demurrage charges in this case was not unreasonable or otherwise unlawful, nor do we find that defendants' demurrage rules as applicable to these shipments are unreasonable. The complaint will be dismissed, and an order will be issued accordingly.

No. 3337.

C. B. HAVENS & COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY.

Submitted October 13, 1910. Decided February 13, 1911.

On a shipment of anthracite coal from Chicago, Ill., to Sturgis, S. Dak., for Government use, held that complainant is not entitled to benefit of a land-grant rate not published when the traffic moved, although subsequently made applicable to similar traffic for a time by lawful publication.

George Cronk for complainant.

S. A. Lynde and *C. C. Wright* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant corporation is a wholesale dealer in coal and building material, with principal office at Omaha, Nebr. Its petition, filed June 21, 1910, prays for reparation on account of alleged unreasonable freight charges exacted by defendant for the transportation of 11 carloads of anthracite coal from Chicago, Ill., to Sturgis, S. Dak., in January, 1909.

The coal was for use of the United States Government at Fort Meade, S. Dak., and was consigned to the quartermaster at that fort. It was purchased by the Government as a result of competitive bids, at a price which included delivery of the coal at Sturgis. Defendant operates between Chicago and Sturgis 248 miles of land-grant aided railroad over which the Government is required to pay only 50 per cent of the commercial rate. The published rate, Chicago to Sturgis, was \$6.80 per ton; the total distance, 1,044 miles; and therefore, by virtue of the land-grant laws, if freight charges had been due from the Government, the rate would have been \$5.9915 per ton. Before submitting its bid complainant asked defendant to quote its rate and through error the land-grant rate was named. One of complainant's officers testified that its bid was based upon

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the price of the coal at Chicago plus the rate which he believed to be in force to Sturgis. By tariff effective May 29, 1909, defendant provided that a rate of \$5.9915 should apply "on hard and soft coal, c. l., when consigned to the United States Government, care of the quartermaster at Sturgis, South Dakota." That is to say, the benefit of the land-grant rate was extended to all persons shipping coal for use by the Government at Fort Meade. This provision was canceled April 1, 1910, since which date the land-grant rate can be used only in cases where the freight charges are paid by the Government. At the hearing complainant did not challenge the reasonableness of the \$6.80 rate. Therefore, the question for determination is the propriety of the application of the land-grant rate to the shipments involved.

In February, 1908, the Commission announced the following rulings:

33. Reduced transportation for Federal, state, and municipal governments.—Under section 22 of the act to regulate commerce, carriers may grant reduced rates for the transportation of property for the United States or for state or municipal governments, under arrangements made directly with such government and in which no contractor or other third person intervenes, without filing or posting the schedule of such rates with the Commission.

36. Rates on shipments for the Federal Government.—If title to property, such as postal cards, passes to the Government at the point of manufacture, the carrier may agree upon a rate to be applied for transporting it for the Government to another point, without filing a tariff with the Commission. But if the manufacturer under his contract is required to deliver to the Government at such other point, the transportation must be under the published tariff rate. In other words, if the shipment is made directly by the Government, this rate may be fixed by the carrier without posting and filing the tariff, but not otherwise.

In April, 1908, rule 36, above quoted, was superseded by rule 65, reading as follows:

65. Special rates for United States, state, or municipal governments.—Section 22 of the act authorizes the carriage, storage, or handling of property free or at reduced rates for the United States, state or municipal governments. As has before been decided, such transportation can be granted without the publishing and filing of a tariff therefor only in instances where the arrangement is directly between such government and the carrier; but it is considered permissible for carriers to incorporate in their lawful tariffs special rates for the United States, state, or municipal governments applicable only to traffic consigned to such United States, state, or municipal government by name, in care of a recognized officer thereof.

In December, 1909, the rule last quoted was rescinded and rule 36 restored in lieu thereof. Therefore, under the rulings of the Commission at the time these shipments moved, defendant could have applied the land-grant rate to this traffic if that rate had been published. As has been noted, the rate was not published until May 29, 1909, and was canceled April 1, 1910, by tariff filed February

24, 1910, apparently in accordance with the ruling announced in the previous December.

Rule 65 was adopted with the idea that publication of special rates upon traffic consigned to the Government would reduce the price of various materials purchased by it for delivery at designated points by approximately the difference between the regular rate and the lower rate which carriers were willing to accept on Government business. But further consideration of the rule itself, as well as of certain transactions which were possible thereunder, convinced the Commission that restoration of its original rule was necessary to prohibit discriminations which, if not unlawful, were at least contrary to the spirit of the statute. Having reached the conclusion that it is improper to permit the benefit of special rates on Government material to accrue to anyone other than the Government itself, the petition herein must be denied and the complaint will therefore be dismissed.

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No. 3459.

W. K. HENDERSON IRON WORKS & SUPPLY COMPANY
v.
TEXAS & PACIFIC RAILWAY COMPANY.

Submitted December 9, 1910. Decided February 13, 1911.

Rate of 23 cents per 100 pounds on sash weights from Shreveport, La., to Marshall, Tex., found unreasonable, and a rate of 6½ cents per 100 pounds established for the future.

George F. Atkins, jr., for complainant.

H. S. Hinton for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of sash weights at Shreveport, La. Its petition filed August 11, 1910, attacks the reasonableness of a rate of 23 cents per 100 pounds for the transportation of sash weights from Shreveport, La., to Marshall, Tex., and prays for the establishment of a reasonable and lawful rate thereon for the future.

Marshall is 42 miles from Shreveport, on the direct line of the Texas & Pacific, and the rate applicable on sash weights between the points named is the class D rate of 23 cents. From Shreveport to Marshall, upon car wheels, axles, and castings, articles substantially similar in transportation requirements, but of greater commercial value than sash weights, there is a commodity rate of 6½ cents per 100 pounds in carloads, minimum weight 40,000 pounds. Both classes of articles are of low grade, and it is difficult to conceive that the rate on sash weights should properly be approximately four times the rate on car wheels and axles between the same points. The defendant's rate per car-mile on car wheels, axles, and castings is 62 cents; on sash weights, \$2.19. The per-ton-per-mile earnings of the 23-cent rate are 11 cents. From Terrell, Tex., a point on the line of defendant, to Shreveport, a distance of 158 miles, defend-

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ant maintains a commodity rate of $17\frac{1}{2}$ cents on sash weights in carloads of 40,000 pounds or more.

Upon consideration of all the facts, we are of the opinion, and so find, that defendant's rate of 23 cents per 100 pounds in carloads, minimum weight 40,000 pounds, on sash weights from Shreveport to Marshall is unlawful and unreasonable, and defendant will be ordered to establish and maintain for the future a rate on said traffic in carloads not to exceed $6\frac{1}{2}$ cents per 100 pounds, minimum weight 40,000 pounds.

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No. 3351.

W. I. & J. R. THOMPSON

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted November 28, 1910. Decided February 13, 1911.

Charges assessed on carload of plows transported from Evansville, Ind., to Huntsville, Ala., found to have been in accordance with lawfully published tariff and not to have been unreasonable or excessive.

J. H. Lilly for complainants.

M. P. Callaway for Nashville, Chattanooga & St. Louis Railway.

N. W. Proctor for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are partners engaged in the hardware business at Huntsville, Ala. Its petition, filed July 2, 1910, assails as unlawful the charges assessed for transportation of a carload of plows from Evansville, Ind., to Huntsville, Ala., in that said charges were not assessed in accordance with the tariff lawfully applicable. Reparation is asked.

On November 28, 1908, complainants shipped from Evansville, Ind., over lines of defendants to themselves at Huntsville, Ala., a carload of plows, weighing 35,000 pounds. Freight charges amounting to \$105 were assessed, based on the sixth class rate of 30 cents per 100 pounds. Complainants contend that the charges should have been assessed on 1,600 pounds of plow handles at the less-than-carload rate of 47 cents, and on the remaining 33,400 pounds at the "special iron" rate of 23 cents, that rate being applicable to plow base.

At the time the shipment moved the following rates were effective:

Agricultural implements, not otherwise specified, carload, minimum weight 20,000 pounds, sixth class, 30 cents.

Plow handles and beams, boxed, crated, or in bundles, less than carload, fourth class, 47 cents.

"Special iron," special rate 23 cents, carload, minimum 24,000 pounds.

Under the head of "special iron" the following articles were enumerated: Plow bases; clevises; coulters; couplers; disks; foots; frogs;

heel bolts; molds; plant fenders; plates; points and wings in crates, kegs, barrels, or casks, loose or wired together.

It was further provided that:

When parts or pieces constituting one or more complete articles are offered to carriers for transportation at one time by one shipper, to one consignee and destination, they will be rated at the classification provided for the complete article, whether set up or knocked down as specified in the classification; provided, however, that where the separate parts or pieces are rated separately in the classification, such separate ratings may be applied.

This shipment consisted of steel beam plows, set up, except that the handles and braces were removed. Practically all the parts of the plow fasten about a common unit, which is termed the standard. To the standard are attached the handles, beam, plow point, and other small parts which make up what is designated the base. The beam could have been detached, but this was not done, apparently because it would render the reassembling of the plow too difficult. Complainants contended, however, that the base with the beam attached should be treated as the base, or that the classification should have provided the special iron rate for plow bases with beams attached. Had the beam been detached the fourth class less-than-carload rate of 47 cents could have been assessed on the handles and beams, and the special iron rate of 23 cents, carload, minimum 24,000 pounds, could have been applied to the bases. Inasmuch as there was no separate rating for bases with beams attached, the agricultural-implement rate was properly applicable under this tariff and not the special iron rate.

The classification has since been amended to provide specifically that plow bases with beams attached, less than carload, will take fourth class rate, while plow bases still take the special iron rate. It has been customary to assess upon steel-beam plows with beams attached the agricultural-implement rate. Complainants receive about two carloads of plows a year and for a number of years have uniformly paid the agricultural-implement rate thereon. No evidence was offered to establish the unreasonableness per se of the charges assessed.

On the whole record we are of opinion and find that charges here involved were assessed in accordance with the classification and tariff in effect, and that such charges were not unreasonable or excessive. The complaint will be dismissed, and an order will be issued accordingly.

No. 3341.

BROWNE GRAIN COMPANY

v.

GULF, COLORADO & SANTA FE RAILWAY COMPANY ET AL.

Submitted November 15, 1910. Decided February 13, 1911.

Rate of 52½ cents per 100 pounds for transportation of snapped corn in carloads, Erath, La., to Miles, Tex., found unreasonable, and rate of 31 cents prescribed for the future. Reparation awarded.

E. P. Browne for complainant.

T. J. Norton and *A. C. Fonda* for Gulf, Colorado & Santa Fe Railway Company.

F. C. Dillard and *J. R. Christian* for Morgan's Louisiana & Texas Railroad & Steamship Company, Houston & Texas Central Railroad Company, Houston East & West Texas Railway Company, and Houston & Shreveport Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a partnership engaged in the wholesale grain and hay business, with principal office at McKinney, Tex. Its petition, filed June 23, 1910, alleges that defendants collected an unreasonable rate for the transportation of a carload of snapped corn, or corn in the shuck, from Erath, La., to Miles, Tex., and that the weight upon which said rate was applied was in excess of the actual weight of the shipment. Reparation is asked.

The shipment was forwarded from Erath to Miles on December 31, 1909. Defendants applied a combination of intermediate rates aggregating 58½ cents per 100 pounds, and that rate assessed upon the weight of 68,500 pounds resulted in the collection of freight charges in the sum of \$402.43. An examination of the tariffs on file shows that the combination rate lawfully applicable to the shipment was 52½ cents, and defendants concede an overcharge to the extent of 6½ cents per 100 pounds. When the shipment moved the rate upon corn, Erath to Miles, was 47½ cents, and the rate of 52½ cents on snapped corn

resulted from a provision in the tariff applicable to a portion of the route (New Iberia, La., to Brownwood, Tex.), that the rate upon snapped corn should be 125 per cent of the rate upon corn. The provision for a higher rate upon snapped corn was eliminated January 28, 1910, and that commodity now takes the same rate as corn. At present there is no joint rate upon corn, Erath to Miles, but the combination rate via defendants' lines appears to be 31 cents, composed of 11 cents to New Iberia, plus 20 cents beyond.

In its answer the Morgan's Louisiana & Texas Railroad & Steamship Company stated that "it would be willing to apply the rate of 31.25 cents per 100 pounds on the shipment in question if its connections would join in taking said action and agree to publish said rates to apply on future shipments." The assistant general freight agent of the Gulf, Colorado & Santa Fe expressed the opinion that a reasonable rate would have been 35 cents, stating as his reason therefor that the rates from corn-producing sections in Louisiana to markets in Texas ought to be substantially the same as rates from equidistant corn-producing points in Oklahoma, in order to avoid discrimination against producers in Oklahoma. The present rate on corn from Miles to Erath is 25 cents, and complainant contends that the same rate should be established in the opposite direction. The facts of record, however, are insufficient to form the basis for a definite finding in that respect. Upon consideration of the record it is our opinion that the present rate of 31 cents is a reasonable rate for the future and would have afforded fair compensation to the defendants on the shipment in question.

Complainant's allegation that the actual weight of the corn was 67,610 pounds, instead of 68,500 pounds, is not supported by evidence of such quality as to overturn the scaling reported by the carrier. As was stated in *Noble v. D. & T. S. L. R. R. Co.*, 20 I. C. C. Rep., 60, disputes as to weights of past shipments raise questions of fact which are quite difficult of determination, as reweighing is ordinarily impossible, and evidence of a very positive character as to the incorrectness of the scaling is necessary before another weight can be substituted therefor. We find that complainant was subjected to the payment of unjust freight charges in an amount measured by the difference between said rates of 58½ cents and 31 cents as applied to a weight of 68,500 pounds, and that it is entitled to reparation in the sum of \$190.08, with interest from January 21, 1910. An order will be entered awarding reparation in the amount stated and requiring defendants to maintain for two years their present rate of 31 cents.

No. 3350.
CARSTENS PACKING COMPANY
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted November 5, 1910. Decided February 13, 1911.

Charges assessed for transportation of eight carloads of live stock from Klamath Falls, Oreg., to Portland, Oreg., via Weed, Cal., not found to be unreasonable. Complaint dismissed.

J. E. Belcher for complainant.

James G. Wilson for Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the purchase, sale, and shipment of live stock, fresh meats, and packing-house products, and it has an office at Tacoma, Wash. Its petition, filed July 2, 1910, alleges that the charges exacted for the transportation of certain carload shipments of cattle from Klamath Falls, Oreg., to Tacoma, Wash., were unreasonable. Reparation is asked on basis of the rate in force from Klamath Falls to San Francisco, Cal., when the traffic moved.

On September 23, 1909, complainant shipped over defendants' lines from Klamath Falls to Tacoma, via Weed, Cal., 8 carloads of cattle, and for the haul from Klamath Falls to Portland paid an aggregate charge of \$1,124.32, based on a rate of \$139.57 per car for 6 cars, each 35 feet 7 inches in length, and at rate of \$143.45 per car for 2 cars, each 36 feet 6 inches in length. For the haul from Portland to destination a rate of \$35 per car was imposed. Only the charges applied to the haul from Klamath Falls to Portland, by the Southern Pacific Company, are attacked, the reasonableness of the rate beyond Portland not being questioned.

When the shipments moved there was no joint rate on cattle, in carloads, from Klamath Falls to Portland. There was a per-car commodity rate from Klamath Falls to Weed, fixed with reference
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to length of the car, the standard being \$52 per 36-foot car. There was also a per-car commodity rate from Weed to Portland, similarly fixed with reference to the length of car, the standard being \$77.50 per 30-foot car. Applied to the equipment in which the shipments moved, these combined commodity rates produced the charges complained of herein. Contemporaneously the Southern Pacific maintained a rate of \$109.15 per 36-foot car for the transportation of cattle in carloads from Klamath Falls to San Francisco.

Shortly prior to the movement of this traffic the class rates of the Southern Pacific Company, Klamath Falls to Portland, were reduced to substantially the San Francisco basis, and about seven months thereafter Portland was given the same commodity rate as San Francisco on live stock from Klamath Falls. The testimony is that this reduction was made upon the solicitation of the commercial interests of Portland, and not because the existing rates were deemed to be excessive.

At the hearing a witness connected with defendant's traffic department testified, in substance, that the haul from Klamath Falls to San Francisco is over a low-grade downhill route, while the haul from Klamath Falls to Portland is over a mountainous route of steep grades and sharp curves, more expensive to operate. The witness had never been over the line, but obtained this information in the course of business. No evidence was offered by complainant touching upon these operating conditions.

The distance from Klamath Falls to San Francisco is 436 miles and from Klamath Falls to Portland 508 miles, a difference of 72 miles in favor of San Francisco. Under the rate applicable to the shipments involved the average gross earnings from Klamath Falls to Portland were about 27 cents per car per mile, while under the rate from Klamath Falls to San Francisco the gross earnings are about 25 cents.

The fact that the class rates to Portland and San Francisco had been made substantially the same, coupled with the subsequent reduction of the commodity rate involved, it is asserted, proves that the charges exacted were unreasonable. With this contention we do not agree. The voluntary reduction of rates to Portland does not of itself constitute proof that former rates were excessive, and upon the showing here made respecting difference in operating conditions over the routes involved, we are not justified in finding that the rate to San Francisco was properly a measure of reasonableness of the rate to Portland. The petition must be dismissed, and it will be so ordered.

No. 2918.

WILLIAM D. SCOTT

v.

TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL.

Submitted December 20, 1910. Decided February 13, 1911.

Rate of \$3.30 per net ton on coal, Carbon Hill, Ala., to Herbert switch, Tex., not found to be unreasonable.

A. T. Watts for complainant.

Wilt E. Orgain for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the sale of wood, coal, and other fuel at Beaumont, Tex. Although his petition herein, filed October 25, 1909, alleges that a rate of \$3.30 per ton exacted by defendants for transportation of a carload of coal in July, 1908, from Carbon Hill, Ala., to Herbert switch, Tex., was unreasonable, the proceeding was brought to recover damages alleged to have been caused by misquotation of a rate.

Prior to movement of the traffic the agent of the Texas & New Orleans Railroad Company quoted a rate of \$2.75 per ton on coal from Carbon Hill to Herbert switch. The lawful rate in force at the time was \$3.30. Complainant paid freight charges and sold the coal on basis of the supposed rate of \$2.75. Later he was required to pay the undercharge of \$25.10. Thereupon he filed his complaint asking for reparation in the amount collected above the rate quoted to him.

Substantially the only evidence adduced relating to the reasonableness of the rate was a statement, which we find to be correct, that when this shipment moved defendants had in force, and still maintain, a rate of \$2.75 per ton on coal from Carbon Hill to Beaumont, Houston, and Port Arthur, Tex. The rate to Herbert switch, which is a station in the neighborhood of Beaumont, seems to have been made by adding to the through rate of \$2.75, Carbon Hill to Beaumont, the Texas commission rate of 55 cents per ton, Beaumont to Herbert switch. The distance is 762 miles and the resulting revenue 4.1 mills per ton per mile.

Upon the facts now within our knowledge we do not find that the rate was unreasonable; but it is apparently in conflict with the principle of the fourth section of the act, as amended June 18, 1910; and it must be understood that this decision is without prejudice to any investigation which may be made under the requirements of that section.

Respecting the right of a shipper to recover by proceedings before this Commission the difference between the lawful tariff rate and a rate erroneously quoted by the agent of a railroad company, we can add nothing to what was said in *Poor Grain Co. v. C., B. & Q. R. R. Co.*, 12 I. C. C. Rep., 418, to the effect that regardless of the rate quoted, the published rate must be paid by the shipper and actually collected by the carrier, under the terms of the statute. This interpretation of the statute is the one adopted by the Supreme Court of the United States, and the reasons given therefor by that court in *Texas & Pacific Ry. Co. v. Mugg*, 202 U. S., 242, are so compelling that it must be regarded as finally settled.

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No. 3603.

CONSOLIDATED WATER POWER & PAPER COMPANY
v.
SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD
COMPANY ET AL.

Submitted December 15, 1910. Decided February 13, 1911.

A tariff provided that when more of an article is shipped on one day by one consignor to one consignee than can be loaded in one car, if the first car is loaded to its full visible capacity, the balance may be carried in a second car at the carload rate on the actual weight. It appears that though the shipment herein could have been so loaded as to bring it within the privilege of this rule, or could have been so loaded that the weight in each car would have exceeded the minimum weight applicable thereto, it was not done; *Held*, That complainant is not entitled to reparation for the difference between the minimum weight on the part carload and the actual weight thereof.

W. D. Hurlbut for complainant.

F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

H. A. Scandrett and *L. T. Wilcox* for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant in this proceeding is a corporation engaged in business at Grand Rapids, Wis. In its petition, filed October 24, 1910, it is alleged that defendants exacted an unreasonable charge for the transportation of two carloads of news printing paper from Los Angeles, Cal., to Grand Rapids, Wis., in November, 1909. No objection is made to the rate, which was 75 cents per 100 pounds, but the complaint recites that the rate was computed upon the actual weight of the first car and upon the minimum carload weight of the second car, which exceeded by 6,335 pounds the actual weight of the lading in that car. Reparation is asked in an amount measured by the application of the 75-cent rate to said weight of 6,335 pounds.

Early in November, 1909, The Times Mirror Printing & Binding House of Los Angeles, Cal., desired to ship to complainant an amount of paper exceeding the capacity of a single car, and ordered two cars from the initial carrier. Upon the first car the consignor loaded

51,080 pounds of paper and took a bill of lading therefor under date of November 17, 1909. Upon the second car the consignor loaded 23,665 pounds of paper and took a bill of lading therefor under date of November 19, 1909. The cars did not move from Los Angeles on the same day. The minimum carload weight for each car was 30,000 pounds. Rule 8 of Transcontinental Freight Bureau Tariff, I. C. C. No. 889, in force when the shipments were made, reads as follows:

When the minimum carload weight or more is shipped in one day by one consignor to one consignee, covered by one b. l., the established rate for a carload shall apply on the entire lot, although it may be less than two or more full carload lots. The first car or cars must be loaded to their full capacity and are subject to established rules for minimum weights, the actual weight of the remainder, provided it is loaded in box cars, to be charged for at the carload rate, reference being made on the waybill for the remainder of the lot to the waybill for the full carload or loads.

Under the rule above quoted, and the minimum weight applicable to the cars, this shipment could have been so forwarded that the rate would have been computed upon the actual weight in either of two ways: (1) The load could have been more equally divided between the cars, so that the weight of each car would have exceeded the minimum weight of 30,000 pounds, and the cars could have been shipped on separate days at the 75-cent rate based on actual weight; or (2) the cars could have been shipped on the same day, under one bill of lading, with the first car loaded to its full capacity, in which case only the actual weight of the second car would have been charged for.

A witness for the complainant testified that the consignor was informed of the requirements of the rule above mentioned. The loading was done by the consignor and the carriers are not responsible for the arrangement thereof. No reason appears why the shipment could not have been loaded so as to comply with the rule. The testimony does not indicate that either the rule involved or the minimum weight applicable to the cars is unreasonable. Upon these facts we hold that complainant is not entitled to reparation on account of the charges on the second carload. The complaint must be dismissed, and it will be so ordered.

No. 3601.

GEORGE D. HENRY

v.

EASTERN RAILWAY COMPANY OF NEW MEXICO ET AL.

Submitted January 26, 1911. Decided February 14, 1911.

Rate imposed on shipment of sheep in double-deck cars from Vaughn, N. Mex., to Kansas City, Mo., fed in transit at Pampa, Tex., found to be unreasonable and reparation awarded.

George D. Henry for complainant in person.

Robert Dunlap and *T. J. Norton* for defendants.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

Complainant, a dealer in grain and live stock at Fairfield, Iowa, by complaint filed October 6, 1910, alleges that he has been charged an unreasonable rate for the transportation of five double-deck carloads of sheep from Vaughn, N. Mex., to Kansas City, Mo., fed in transit at Pampa, Tex. Reparation is asked. By stipulation the case was submitted to the Commission for determination upon the pleadings and without hearing, the filing of briefs and presentation of oral argument being expressly waived.

The sheep were forwarded from Vaughn on October 10, 1908, stopped at Pampa for feeding, and subsequently transported to Kansas City, where a combination rate of 61½ cents per 100 pounds was collected on February 23, 1909, made up of 25 cents to Pampa and 36½ cents beyond. The entire movement was over the lines of the Santa Fe system. Defendants admit that the rate imposed was unreasonable and that a reasonable rate for the transportation would have been 48 cents per 100 pounds, based on the rate of 41 cents then in force from Vaughn to Kansas City, plus a feeding-in-transit charge of 7 cents, but refused to apply such rate on the ground that the feeding-in-transit charge was not applicable to a shipment from Vaughn until November 12, 1909, subsequent to the date of movement. On July 1, 1909, they filed application on the special docket for authority to make reparation to the basis of this 48-cent rate. The request, however, was denied because the claim apparently

involved the retroactive application of a transit privilege, and thereby came within the prohibition of the Commission's rules Nos. 6 and 77, Bulletin No. 4 of Conference Rulings. More is said with reference to this below.

Vaughn is a point on the Belen cut-off of the Santa Fe system between Clovis, N. Mex., and Belen, N. Mex. This line is of comparatively recent construction and the first rate on sheep from Vaughn was provided by amendment No. 33 to Santa Fe System Tariff, I. C. C. No. 3465, effective November 6, 1907, which authorized the application to Kansas City of the rate from Belen published in the tariff as amended. The latter named a rate of 41 cents from Belen and in item 30 published the sections of the Revised Statutes of the United States prohibiting the confinement of sheep in cars "for a longer period than 28 consecutive hours without unloading same for rest, water, and feeding" for at least five hours, at the expense of the owner. Aside from this mandatory requirement to feed in transit, amendment No. 11 to Santa Fe System Joint Circular, I. C. C. No. 1203, effective January 23, 1908, contained the following provision:

Shipments of live stock originating at stations on E. Ry. Co. of N. M. (formerly P. V. & N. E. Ry.) destined Mo. River and east, may be fed in transit at stations in Texas on the P. & N. T. Ry. and So. Kans. Ry. Co. of Texas on basis of through rate point of origin to destination plus 7 cents per 100 lbs. feeding-in-transit charge.

The Eastern Railway Company of New Mexico was incorporated in 1902 to build a line from Rio Puerco, N. Mex., to Texico, N. Mex., which includes the Belen cut-off. Pampa is on the Southern Kansas Railway of Texas. This provision was construed to limit the privilege to shipments originating at stations on the road formerly known as the Pecos Valley & Northeastern Railway, which did not include the Belen cut-off, but we think it may be fairly read to cover all stations on the Eastern Railway Company of New Mexico; and that the parenthetical clause "(formerly P. V. & N. E. Ry.)" may be reasonably regarded as indicating that the Eastern Railway Company of New Mexico included in its lines the former Pecos Valley & Northeastern Railway. While the feeding-in-transit circular was not referred to in the tariff naming the 41-cent rate from Vaughn, as now required by rule 10, Tariff Circular 17-A, both publications were old issues, being lawfully on file prior to May 1, 1907, and therefore not strictly subject to rules of interpretation subsequently promulgated. (Page 5, Tariff Circular 17-A.) Under the circumstances we can not accept the view that this case involves the retroactive application of a transit privilege.

At the time the shipment moved there was in force to Kansas City from Albuquerque and points on the Santa Fe lines south of the Belen



cut-off, but not including points on the cut-off, a joint rate of 40½ cents which applied in connection with the feeding-in-transit charge of 7 cents, thus making a combination rate of 47½ cents. A large majority of these points are farther distant than Vaughn from Kansas City, but in the same territory, and the nonapplication of the privilege placed Vaughn at a disadvantage as compared with them. Effective November 7, 1908, by amendment No. 46 to Santa Fe Tariff, I. C. C. No. 3465, the joint rate from Vaughn was reduced to 40½ cents. Effective November 12, 1909, amendment 59 provided that shipments under the tariff were entitled to feeding-in-transit privileges named in Santa Fe publications filed with this Commission, thus complying with rule 10 of Tariff Circular 17-A. The application of this privilege at a charge of 7 cents per 100 pounds on shipments from Vaughn was continued in Santa Fe Circular, I. C. C. No. 5417, effective September 5, 1910, and remained in force until January 15, 1911, when Circular I. C. C. No. 5525, in section 1, reduced the charge on shipments fed at Texas points to \$10 per car of any length.

Under all the circumstances of this case the Commission is of opinion and finds that the combination rate of 61½ cents per 100 pounds collected from complainant was unreasonable in and to the extent that it exceeded a rate of 48 cents per 100 pounds and that reparation should be awarded against defendants in the sum of \$148.50, with interest from February 23, 1909, and it will be so ordered.

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No. 3296.

NUCOA BUTTER COMPANY

v.

ERIE RAILROAD COMPANY ET AL.

Submitted January 15, 1911. Decided February 14, 1911.

Complainant refines cocoanut oil, and ships, under trade names, a pure cocoanut oleine, which is chiefly used as a substitute for lard, and a pure cocoanut stearin, which is used as a substitute for cocoa butter. Defendants, under the Official Classification, rate complainant's oleine with cocoanut oil and rate its stearin with cocoa butter; *Held*, That cocoanut oleine competing mainly with lard and lard compounds should be rated not higher than lard and lard substitutes, and that this record furnishes no ground upon which to modify the present rating of cocoanut stearin.

Charles Conradis for complainant.

H. A. Taylor and *T. H. Burgess* for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Chairman*:

The issue presented in this case is one of classification alone. The defendants named are 29 carriers by rail operating in what is known as Official Classification territory, which may roughly be described as extending north of the Ohio and James rivers from the Atlantic coast to the Mississippi River.

Complainant is a corporation engaged in refining vegetable oils, and, at present, has its principal place of business at Soho Park, N. J., on the line of the Erie Railroad. Its chief products, made from crude cocoanut oil, are a pure cocoanut oleine known by the trade name of Nucoline, and a pure cocoanut stearin known by the trade name of Nucoa Butter. Under the classification now in force, Nucoline takes third class rates for less-than-carload shipments and fifth class rates on carloads. Nucoa Butter now takes second class rates, l. c. l., and third class, c. l. Neither Nucoline nor Nucoa Butter is specifically rated in the Official Classification, nor are other proprietary articles of the same composition named therein; but the defendants class Nucoline and similar articles under "cocoanut oil," and class Nucoa Butter and similar articles under "cocoa butter substitutes," and thereby obtain the ratings.

The prayers of the complainant are that Nucoline be classed with "lard substitutes," which would not change the carload rating, but would apply rule 26 of the Official Classification to shipments in less-than-carload quantities, or rates 20 per cent below third class rates, but not lower than fourth class rates; and that Nucoa Butter be classed and rated with "cocoanut oil;" that is, third class, l. c. l., and fifth class, c. l.

The evidence is very full and clear as to the physical characteristics and actual uses of Nucoline and Nucoa Butter. Nucoline is a bland cocoanut oleine, resembling lard when in the solid state, but less liable than lard to become rancid. Its melting point is about 71° F.; in bulk, due to nonconductivity, it retains its physical condition, either as a fat or as an oil, for some time after this critical temperature has been passed. It is used for nearly all culinary purposes for which lard or lard compounds may be used, but there are advantages to be derived from the use of lard in some instances and countervailing advantages from the use of lard substitutes, or of Nucoline, in others. Nucoline, or pure cocoanut oleine, is in good demand for domestic use, where for hygienic or other reasons it is not desirable to mix animal and milk fats in ordinary cooking; in such use it is a substitute for lard. In the baking industries it is used as a shortening for bread, cakes, biscuit, and the like, the evidence indicating that the quality of the finished goods varies with the kind of shortening used; butter giving one grade of goods, lard another, lard compounds another, and Nucoline still another. Among confectioners cocoanut oleine is used as a slab dressing, and for salting peanuts and the like, and in such use is more desirable than are fats or oils which are more easily rendered rancid. With these modifications in mind the effect of the evidence is clearly to show that Nucoline is used as a substitute for lard.

Lard is rendered and purified hog fat; lard substitutes or compounds are generally compounds of cottonseed oil and beef tallow in the proportions of 80 per cent of the former to 20 per cent of the latter. The evidence does not show the melting points of lard and lard substitutes, but it does show that for domestic uses these articles are packed in tin pails having slip or unsealed covers. Nucoline, for domestic uses, is packed and shipped in sealed tin cans or pails, and it would appear to be a fair inference from this fact as well as from the whole record that Nucoline, or cocoanut oleine, has a lower melting point than either lard or lard substitutes.

In price Nucoline has varied from 8 cents per pound in 1906 to 12½ cents in 1910; between the same dates lard has varied from 8 cents to 14.43 cents, and lard substitutes or compounds from 5½ cents to 10½ cents. Lard of course follows the price of hogs; lard substitutes

follow the price of lard, but Nucoline does not answer to the fluctuations of these commodities. The price of Nucoline has been governed in the past mainly by the price of crude cocoanut oil and only in a small degree, if at all, by the price of lard. In December, 1910, when cash lard in New York City was declining and sold for about 11 cents per pound, Nucoline was advanced from 12 cents to 12½ cents per pound; at the same time lard compounds, or lard substitutes, sold as low as 9 cents per pound.

From these facts it will be seen that the price of Nucoline is independent of the price of lard or of lard substitutes; this, however, does not prove that Nucoline, or cocoanut oleine, is not properly to be considered as a substitute for lard, but merely bears out the rest of the facts before us to the effect that cocoanut oleine as a substitute for lard or lard compounds has valuable qualities that commend it to the public irrespective of the relative prices of these articles. Whether cocoanut oleine, under its various trade names, sells at any given time at a price higher or lower than the price of lard is not of great moment; the important matter, from a classification point of view, is the relative cheapness of the two commodities as compared with butter, and with olive and peanut oils, or similar cooking fats.

The main objections urged by the defendants to the rating or classification of cocoanut oleine with lard and lard substitutes were that it is practically oil; that it is of higher value than the cocoanut oil from which it is made; that it does not compete with lard in the sense that other substitutes of lower value compete; and that the commercial conditions do not make such classification necessary. Food oils, indeed all oils, excepting aniline and essential oils, in wooden barrels, under the Official Classification take third class rates in less-than-carload shipments and fifth class rates in carloads; cottonseed oil in the form of a lard substitute, however, is rated under rule 26 lower than third class, and yet in price, in desirability for use in cooking, and in other ways it is a commodity of greater value than the crude cottonseed oil from which it is made. Crude cocoanut oil can not compete with lard, but refined cocoanut oleine can and does so compete and without regard to whether lard or cocoanut oleine is the higher in price.

Upon the record before us we are of the opinion, and therefore find, that Nucoline, or pure cocoanut oleine, is entitled to be classified with lard and lard compounds, and that any discrimination in the rates applied on these commodities is undue.

Nucoa Butter, the other refined product of the complainant, is a pure cocoanut stearin. At all ordinary temperatures it is a solid and is shipped in cakes or blocks packed in boxes. Its chief uses are found in the manufacture of confectionery and bakery articles of

high grade, and in such uses it is undoubtedly a substitute for cocoa butter. Cocoa butter, it may be well to state, is a butter derived from the cacao nut in making the cocoa of the breakfast table. In no view of the matter can we regard Nucoa Butter, or any cocoanut stearin, as entitled to be classed and rated the same as cocoanut oil. For the purposes of transportation it is not an oil; in value it varies from 170 to over 200 per cent of the price of cocoanut oil; and its main use is actually as a substitute for cocoa butter. We do not see on the facts now before us any impropriety in the present classification of Nucoa Butter and other cocoanut stearins. Indeed, if cocoanut oleine is entitled to the lard rating because it competes with lard, cocoanut stearin ought not to have a lower rating than the cocoa butter with which it competes.

This complaint was brought in the name of the Nucoa Butter Company alone, the defense of the Official Classification was made by the Erie Railroad Company, acting for all the defendants; but that the matter was not merely an individual objection to the classification was made plain at the hearing when a competing producer of cocoanut oleine and cocoanut stearin voluntarily appeared as a witness for the complainant and when the chairman of the Official Classification Committee testified on behalf of the carriers. Throughout this report we have endeavored to make plain that our finding with respect to the proper classification of cocoanut oleine is not confined to the particular product known under the trade name of Nucoline, but extends to all such products without regard to their particular designations.

An order in accord herewith will be issued.

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No. 3097.

PACIFIC COAST BISCUIT COMPANY

v.

OREGON RAILROAD & NAVIGATION COMPANY ET AL.

Submitted November 7, 1910. Decided February 13, 1911.

A transcontinental tariff provided one rate on wax or gummed paper and a lower rate on wrapping paper. The paper shipped by complainant was slightly waxed with paraffin, and although sometimes used as an outside wrapper, it was what is known to the trade as wax paper; *Held*, That having established a specific rate on wax paper, defendants were compelled to apply that rate to all grades and qualities of wax paper, regardless of the use to which it might be put.

Lew Anderson for complainant.

A. C. Spencer for Oregon Railroad & Navigation Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The issue raised in this proceeding is whether a rate of \$1.20 per 100 pounds assessed by defendants for the transportation of a car-load of paper from Bennington, Vt., to Portland, Oreg., in February, 1908, was lawfully applicable under the tariff then in force. Complainant alleges that the shipment was entitled to a rate of 75 cents under the tariff.

Transcontinental Freight Bureau West-Bound Tariff, in effect at date of shipment, contained several items applying on paper, but only three of them need be considered in this case. The description applied to complainant's traffic by the Transcontinental Inspection and Weighing Bureau, under which a rate of \$1.20 applied, was as follows:

PAPER. Envelopes (in boxes); shipping tags; papeterie; cardboard, including cut cards (not printed) and paper photographic cards (cut or uncut); picture matting; check paper for cash registers; cigarette paper; and wax or gummed paper.

A rate of \$1 was applicable to paper described in the tariffs as follows:

PAPER. Wrapping (printed or not printed); manila tag board and tailors' pattern paper.

A rate of 75 cents was provided for articles coming within the following description:

PAPER. Wrapping paper, n. o. s., manila tag board and tailors' pattern paper; carriers' liability limited to 5 cents per pound.

The shipment was released to a valuation of 5 cents per 100 pounds, and was billed as wrapping paper by the initial line, presumably in conformity with the shipper's description, and at destination the freight charges were assessed on basis of the rate applicable to wax paper. Conceding that no rate in excess of \$1 could have been applied to a carload shipment of an article properly described as wrapping paper, the question to be determined is which one of the terms "wax paper" or "wrapping paper" was properly descriptive of the commodity shipped.

The evidence and exhibits show that the paper was waxed with paraffin. It is used by complainant as an inside lining for cartons containing crackers, and as an outside wrapper for protection against moisture on packages which will be subjected to a moist or damp climate. Two invoices from the vendor are on file, on one of which the commodity is described as "carton lining," in the other as "dry wax biscuit paper." In this connection complainant's general manager testified:

One bill clerk would call it dry wax paper, and another clerk would call it carton liners; another would call it dry wax wrapping paper; merely a matter as to the particular bill clerk they have. The article all through the entire contract is that one kind of paper—dry wax.

An expert who appeared at the invitation of complainant and defendants testified that there is no term in his business that is as broad and comprehensive as the term "wrapping paper;" that high-grade tissue and writing papers are used for wrapping purposes in some lines of business; but when asked if he would take out of stock the paper similar to that under consideration in case a retailer came to his establishment and ordered several hundred pounds of ordinary wrapping paper he replied:

Not unless he wanted it for a certain specified purpose. If he wanted to protect something from dampness, I would consider this. But as a matter of fact this particular paper is not regularly carried by any ordinary paperhouse—usually supplied to order. Our wax paper is of an entirely different character of material, more intended for use between layers of candy or anything else that has a tendency to have moisture ruin it.

A rate of 90 cents has since been established on "grease-proof wrapping paper," and complainant's shipments of paper of the quality here described are accorded the 90-cent rate by the carriers.

Confusion in tariff interpretation is likely to be encountered where descriptions of a commodity refer in one instance to the use to which

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the article is devoted and in another instance to the inherent quality of the article. As a matter of tariff interpretation, we are constrained to hold that a specific rate having been established on wax paper, defendants were compelled to apply that rate to all grades and qualities of wax paper, regardless of the use to which it was put. Although this paper was admittedly used in part as an outside wrapper, it is clear that it is a wax paper as that term is understood in the trade, and it follows that the proper rate, under the tariffs in force, was applied by the carriers.

The tariff provisions applying on paper, hereinbefore referred to, are such as to lead to great confusion and misunderstanding, if not to actual discrimination, in their application to the numerous kinds and grades of paper. In readjusting these provisions since this complaint was filed, the carriers virtually admit that the tariffs were not free from confusion, and we are of the opinion that defendants should at once give special consideration to the subject of papers and place their tariff provisions with respect thereto upon a more logical and simplified basis, if possible, making fewer items and between such items as are established making the lines of demarkation clear and free from ambiguity. The complaint will be dismissed.

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No. 1666.

BOARD OF RAILROAD COMMISSIONERS OF IOWA
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted January 9, 1910. Decided February 13, 1911.

1. The net revenues of a carrier have often an undoubted and important bearing upon the question of the reasonableness of its rates, but the fact that they are greater than the returns on ordinary business enterprises is not sufficient in itself to justify a finding that the rates are excessive; the value of the service and other factors that enter into the construction of rates must also be taken into consideration.
2. A total charge approximating 30 cents per passenger, consisting of a toll of 25 cents and mileage, for passage across the Dubuque bridge found not to be unreasonable when viewed from the standpoint of all the carriers participating in the traffic.

H. W. Byers and John R. Waller for complainant.

Blewett Lee and J. M. Dickinson for Illinois Central Railroad Company and Dunleith & Dubuque Bridge Company.

A. G. Briggs, G. W. Markham, W. J. Ainsworth, Davis, Kellogg & Severance, and Hurd, Lenehan & Kiesel for Chicago Great Western Railway Company.

Hale Holden and Chester M. Dawes for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The complaint in this case concerns a fare of 30 cents charged by the defendant railroad companies, as the complainant alleges, for the transportation of passengers, both locally and on through journeys, over the bridge of the Dunleith & Dubuque Bridge Company between Dunleith or East Dubuque, in the state of Illinois, and Dubuque, in the state of Iowa. It is alleged that the rate is excessive and unreasonable in and of itself, as well as discriminatory in that the defendants do not make the charge on passenger traffic between Dubuque and Chicago, although the 30-cent fare is demanded of passengers traveling between Illinois points west of Chicago and all stations in Iowa, including Dubuque.

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The history of the bridge is this: The Dunleith & Dubuque Bridge Company was incorporated under a special act of the legislature of Illinois, approved February 14, 1857, enacted for the purpose of securing the erection of a bridge across the Mississippi River at this point. The act provided that the work should be commenced within two years and be completed within ten years after the date of its passage. But the authority of the federal government to span the river with a bridge at that point was not given until July 25, 1866, when an act of Congress was approved authorizing the erection of such a structure. At that date no part of the work had been done by the bridge company, and a second act was therefore passed by the legislature of Illinois, approved March 8, 1867, extending the time for the commencement and the completion of the enterprise. A bridge company of the same name filed its articles of incorporation in the state of Iowa on June 3, 1867. On July 6 of that year the two bridge companies, apparently under proper authority in the general laws of the state of Illinois, were consolidated under the name of the Dunleith & Dubuque Bridge Company, and that is the company now before us. The consolidation was subsequently ratified by a special act of the legislature of the state of Iowa, approved February 28, 1907.

The actual erection of the bridge was commenced in 1867, and the structure appears to have been completed during 1870. The bridge proper consists of a draw and five spans, and is 1,536 feet in length. It was built purely for railroad purposes and has room for only one track. The passenger station of the Illinois Central in Dubuque is about three-fourths of a mile south of the west end of the bridge, and the bridge track is extended to that station and is owned by the bridge company. Its total trackage is 6,891 feet in length. The distance between the east end of the bridge and the Illinois Central passenger station in East Dubuque is 1,400 feet. This track is owned by the railroad company. The distance from the station of the Illinois Central in Dubuque to its passenger station in East Dubuque is about 1.6 miles.

The material facts in the financial history of the bridge company, as we gather them from the record, are as follows: The original cost of the draw and six spans, together with the abutments and piers, seems to have been \$589,989.92. The total amount expended on the bridge, including the last-named item, from June, 1867, to February 14, 1895, was \$1,016,862.82. This sum embraces expenditures for replacements and betterments during those years, but does not include the cost of ordinary maintenance and repairs. During the years 1896 to 1898 the bridge was partially rebuilt, but at what cost is not definitely shown on the record. It is to be observed that the total value of the

property, as assessed by the taxing authorities of the two states, is \$1,864,048. Of this amount \$1,090,000 is assessed in Illinois and \$756,048 in the state of Iowa.

The Illinois Central Railroad was completed to East Dubuque in 1854, and on November 13, 1867, it joined with the Dubuque & Sioux City Railroad Company, the latter comprising what is now known as the Illinois Central lines west of the Mississippi River, in an agreement with the bridge company wherein the latter undertook to erect the bridge and to maintain and keep it in repair in perpetuity. In this agreement the bridge company granted to the two railroad companies the perpetual right to use the bridge. The bridge company also agreed to furnish to the Illinois Central land in Dubuque "sufficient to enable it to transact its freight and passenger business in said city, and to prepare and maintain a proper and sufficient railroad track from such bridge to the said land." The two railroad companies on their part agree to use the bridge in perpetuity; to pay the bridge company 25 cents for each passenger carried by them across the river; and on freight to pay a graduated rate per 100 pounds, decreasing, in accordance with a schedule set forth in the agreement, as the tonnage increases. Should the freight earnings of the bridge company from all sources fall below \$80,000 in any one year, the deficiency is to be made up by the two railroad companies. Any surplus revenue from freight over \$150,000 is to be divided three-sixths to the bridge company, two-sixths to the Illinois Central, and one-sixth to the Dubuque & Sioux City Railroad Company.

Under the terms of the agreement other railroad companies are permitted to use the bridge in the transportation both of freight and passengers; and on January 25, 1888, the Chicago, St. Paul & Kansas City Railway Company, now known as the Chicago Great Western Railway Company, acquired that right under a contract with the bridge company. On February 25, 1889, a substantially similar contract was made with the Chicago, Burlington & Quincy Railroad Company. By the terms of these agreements the Chicago Great Western is required to pay to the bridge company, in monthly installments, an annual rental of \$30,000, and the Chicago, Burlington & Quincy an annual rental, in monthly installments, of \$18,000. The difference in the amounts paid by the two companies is ascribed on the record to the fact that the bridge has greater value to the Chicago Great Western than to the Burlington. The former runs into and beyond Dubuque, while the latter does not run into Dubuque at all; its main line stops at East Dubuque and its passengers are carried across the river to Dubuque on a "stub" train. In addition to their fixed rentals each line using the bridge, including the Illinois Central and the Dubuque & Sioux City, is required monthly to pay a share of

the cost of maintenance, repairs, and taxes, based upon the proportion which the wheelage of each company bears to the entire wheelage over the bridge during each month.

Between East Dubuque and Galena Junction, a distance of about 13 miles, are two tracks, one of which belongs to the Illinois Central and the other to the Burlington. Under a contract between them these tracks are used by all the companies mentioned in this proceeding, one track being used for eastbound trains and the other for westbound trains. In this agreement the Great Western undertakes to abstain, so far as it legally may, from taking any freight or passenger traffic to or from East Dubuque or to or from any point between East Dubuque and Galena Junction. In order to carry out this stipulation neither the passenger nor the freight trains of the Great Western are stopped at East Dubuque. In the original contract between the bridge company, the Dubuque & Sioux City, and the Illinois Central, the right was reserved to the latter company to arrange the time-table and running regulations of any other lines that might later acquire the right to use the bridge. There are no local bridge trains between Dubuque and East Dubuque and the very limited passenger traffic by rail between the two points is carried on the through trains of the Illinois Central and the stub train of the Burlington which connects at East Dubuque with all through trains of that road.

It is apparent from these facts that the Illinois Central Railroad Company dominates the situation; it owns, or at least indirectly controls, the bridge company, and it controls the Dubuque & Sioux City Railroad Company. In a proceeding against it by the attorney-general of Illinois for an accounting under its charter and a provision in the state constitution requiring it to pay the state annually 7 per cent of its gross earnings, it was said that the Illinois Central had financed the bridge company, or at least had subscribed extensively to its original issue of capital stock. In this proceeding, that was denied by counsel. But the record contains much testimony as to the relation between the Illinois Central, the bridge company, and a company known as the Mississippi Valley Corporation. All but 5 shares of the capital stock of the bridge company are owned by the Mississippi Valley Corporation, the latter being in turn owned, at least substantially, and being absolutely controlled, by the Illinois Central Railroad Company. Its officers, as well as the officers of the bridge company, are also officers of the railroad company. It will not be necessary, however, closely to examine the record in order to ascertain with exactness the relation between the three companies. It suffices to say that counsel for the Illinois Central Railroad Company during the argument before us admitted that for all practical purposes and for all ends sought in this complaint, the Illinois Central might be

regarded as the owner of the bridge in question. We turn our attention, therefore, to the reasonableness of the rates that are exacted by the several defendants for the transportation of passengers by rail over the river between Dubuque and East Dubuque.

From a statement filed of record by the defendant it appears that the total income of the bridge company for the last ten years has averaged about \$175,000 a year. This amount includes the \$30,000 yearly rental paid by the Chicago Great Western and the \$18,000 paid by the Burlington, which amounts seem to be credited to the total freight receipts of \$150,000 paid by the Illinois Central. It also includes the 25 cents paid by the Illinois Central to the bridge company for each passenger transported across the bridge. The \$175,000 would therefore seem to be a net yearly income, since the cost of maintenance, repairs, and taxes are paid by the three companies using the bridge in proportion to their wheelage. The total income of the bridge for the last five years has averaged about \$181,000, from which it may fairly be inferred that its earnings in the future are not likely to be diminished, so long at least as no other bridge is erected by competitors at or near that point. In round numbers, the net earnings of the bridge company are said to amount to about 20 per cent on the original cost of the structure, and this fact the complainant strongly urges upon our attention as a reason for requiring a reduction in the amount of the bridge tolls exacted on passenger traffic. As a matter of fact, however, these results to the bridge company appear as book accounts only. Apparently it has no actual cash transactions. The Illinois Central really pays it nothing under the contract between them; this is all adjusted by book entries. The rentals due from the Burlington and Chicago Great Western, as we understand the matter, are handled in the same way. Considered therefore from the standpoint of the Illinois Central, as the owner of the bridge and the beneficiary of all its revenues, the result of the bridge operations, when analyzed, seems to be that the Illinois Central receives a guaranteed income of \$48,000, being the sum of the annual rentals paid by the other two lines; it also collects upon its own passenger traffic across the bridge from \$20,000 to \$30,000 a year. Out of these gross cash revenues aggregating, say, from \$70,000 to \$80,000 annually it pays its proportion, according to wheelage, of the cost of maintenance, repairs, and taxes; the balance of those items of expense being paid through the Illinois Central by the Burlington and Chicago Great Western. What remains of the gross annual revenues thus received by the Illinois Central is the net income that accrues to it from its ownership of the bridge, after all its traffic, both freight and passenger, has been moved across it. It is only by assigning the contract value to this traffic movement over the bridge that the earnings

of the bridge company on the investment can be said to approximate so large a percentage as above indicated.

But the fact that the net revenues of the Illinois Central from its ownership of the bridge, when so estimated, may be greater than the returns on ordinary business enterprises is not sufficient in itself to justify a holding that the bridge tolls are excessive. Bridges are and have been regarded as precarious properties; they may be damaged or entirely swept away by floods, and the erection of other bridges near by may draw away their tenants and thus seriously affect their earning capacity. The net revenues have an undoubted and often an important bearing upon the question of the reasonableness of rates, but the value of the service to the shipper and the other elements so often referred to as entering into the reasonableness of rates must also be taken into consideration. In this connection *Canada Southern Ry. Co. v. International Bridge Co.*, 8 App. Cases, 731, is not without interest. A railroad company may be operated with a less return than it ought to enjoy or even at a loss, but neither condition of affairs would justify the exaction by it of rates that are higher than they reasonably should be for services performed, all things being considered. So also the fact that the net earnings of a carrier may be large does not of itself justify us in fixing a rate at less than is reasonable for the service, all other things being considered. While bearing in mind the generous returns received on the bridge investment by the Illinois Central, we must therefore also consider what else is disclosed upon the record.

On the argument the principal defendant emphatically denied that every passenger carried across the bridge pays a toll of 30 cents or even of 25 cents. In support of its contention an exhibit was filed showing payments made by 15,095 passengers over its own line that crossed the bridge during the month of July, 1908. Of these, 23.4 per cent paid nothing in addition to the regular fare constructed on a mileage basis, 40 per cent paid 10 cents in addition to the regular fare, and 36.6 per cent paid the full arbitrary of 25 cents in addition to the regular mileage rate basis. The average passenger toll paid to that defendant during that month, which was selected, as is explained, because it was the last month for which the accounts had been made up prior to the hearing, is said to have been 13.15 cents per passenger. Upon inquiry the Chicago Great Western was unable to give us exact figures, but it estimates that during the fiscal year ending June 30, 1909, it carried about 85,000 passengers across the bridge, of which only about 35,000 paid fares involving, on account of the bridge toll, something in addition to the regular mileage basis. Of these 35,000 passengers 10,000, as is estimated, paid fares that included the full bridge arbitrary of 25 cents; the remainder of the 35,000 passengers

paid fares that averaged about 10 cents for the bridge service in addition to the regular mileage. On the other hand, the Burlington asserts that it carried but 32,842 passengers over the bridge during the fiscal year ending June 30, 1908, and that the cost to it for the service performed was 37 cents per passenger. It must be remembered, however, that for its rental of \$18,000 a year and its proportion of the cost of bridge maintenance the Burlington not only gets all its passengers across the bridge, but all its freight as well. This is equally true of the Chicago Great Western; and the actual results, so far as the Illinois Central is concerned, have heretofore been explained.

We have not been able to verify any of these statistics, but assuming their approximate accuracy, the figures of the cost per passenger are of the sort that require explanation. Each of the defendants collects the full amount of the bridge toll on passenger traffic from all its local points west of Chicago and from all other points where competition permits it to do so. It is only from competitive points that they collect less than their regular mileage rate plus the bridge arbitrary. The Chicago Great Western, being the short line from Chicago to Dubuque, is the only one of the defendants that gets its full mileage on passenger tickets between those points plus the bridge arbitrary, and the other defendants with their longer hauls are compelled to meet its rate. The result is that the fare of the Burlington from Chicago to Dubuque is shown on its tariffs as being only 10 cents higher than its fare to East Dubuque; and the Illinois Central, being put in the same position by its longer mileage, is compelled to meet the rate of the Chicago Great Western from Chicago to Dubuque, and does so by publishing a fare to Dubuque that is also but 10 cents higher than its fare to East Dubuque. If there were no bridge to cross, the Illinois Central and the Burlington, with their longer lines from Chicago to Dubuque, as heretofore stated, would still have to meet the fare of the Chicago Great Western based on its shorter mileage between those points. It is a more accurate statement, therefore, to say, not that the Illinois Central and the Burlington do not receive the full bridge arbitrary on their passenger traffic from Chicago and other competitive points, but, as heretofore stated, that they shrink their mileage basis in order to meet the fares of the short lines. It definitely appears, in fact, that the Illinois Central on its books credits 25 cents to the bridge company out of each fare collected by it that involves a passage across the bridge. We are therefore brought to the question put in issue by this complaint whether the bridge toll exacted by the defendants is not unreasonable.

It is urged that a bridge a mile long ought to be regarded as simply a mile of the carrier's track and ought not to be the foundation for

any separate or higher charge. This, however, is not the generally accepted view. By reason of the great cost of such structures a bridge has been regarded more or less generally as adding a constructive mileage to the carrier's line for which an additional charge may be exacted. Moreover, bridges are ordinarily built and operated by separate companies, although not infrequently, as in this case, the bridge companies are owned by the carrier or carriers that use the bridge. As a rule, the accounts of the bridge companies are kept separately and the rights of the owning carrier or carriers to use the bridge and the compensation therefor are established and controlled, as in this instance, by formal contract. The compensation is ordinarily fixed in the form of a definite toll per passenger and sometimes a more or less definite charge is assessed on freight. The carriers usually lay the burden upon the traveling and shipping public by adding the tolls to their regular fares and rates, and these additional charges have been recognized as valid by the Commission. *Freight Bureau of Cincinnati Chamber of Commerce v. C., N. O. & T. P. Ry. Co.*, 7 I. C. C. Rep., 180; *Commercial Club of Omaha v. C. & N. W. Ry. Co.*, 7 I. C. C. Rep., 386. Moreover, the practice of making a higher charge on account of the bridge haul, besides being an old one, seems to be more or less usual where competitive conditions admit of an additional charge. An examination therefore of the tolls paid, in the form of additional or higher charges or otherwise, for bridge service in this region and elsewhere throughout the country will throw some light upon the charges exacted by these defendants and is the most obvious test of its reasonableness.

Such an investigation has been made with some care, and it reveals the fact that there is no general rule with respect to the bridge arbitraries. In many cases the bridge toll includes the transportation, while in other cases an additional charge for the transportation over the bridge upon the regular mileage basis is added to the toll. This is the case here with the Chicago Great Western, which, as stated, is the short line between Chicago and Dubuque; and we understand this to be the case with the short lines between Dubuque and competitive points west of Chicago. It is also the case with the fares of the defendants from all noncompetitive points. In all such cases the defendants here exact a bridge toll of 25 cents per passenger, and also collect the usual mileage rate for the distance covered by the bridge, its approaches, and tracks; this makes a total charge of approximately 30 cents per passenger for the carriage across the river. Some of the bridges are of greater length than the Dubuque bridge and have longer approaches, while others are shorter and have shorter approaches. The charge for a passage over several of them is as much as 50 cents. The more usual toll is 25 cents, to which in about half the instances

examined the mileage rate is added. Testing the charge of 25 cents for passage over this bridge with the tolls exacted for passage over other bridges we find it not unreasonable. And without laying down any principle for application elsewhere but confining our ruling to the Dubuque bridge, we are not prepared to say on this record that the addition to the bridge toll of the usual mileage fare on passenger traffic to and from noncompetitive points is unreasonable. Viewing the situation from the standpoint of all the lines using the bridge we see no justification for the very extensive disturbance of the passenger schedules in effect in this region that would follow a finding in conformity with the prayer of the petition.

There remains for consideration the question of the local fares for the carriage of passengers between Dubuque and East Dubuque. The record shows that the bridge is not a convenient avenue for passage by rail between the two places, and that on the average not more than ten tickets per month have been sold by the Illinois Central Railroad Company locally between the two points. Its station in Dubuque is remote from the business district of the city. Near the railroad bridge is a footbridge built by an independent and private company which has no tracks of any kind. During the fiscal year ending May 1, 1909, as we are advised, 91,615 round-trip foot-passenger tickets were sold across this bridge, the round-trip fare being 5 cents. During the summer months a ferry carries passengers across the river for 5 cents, running every fifteen minutes. Under these circumstances we are not inclined to disturb the local fare between the two points.

The complaint must be dismissed and it will be so ordered.

20 I. C. C. Rep.

No. 2528.

TRUCK GROWERS ASSOCIATION OF CHARLESTON DISTRICT, CHARLESTON, S. C.,

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted May 4, 1910. Decided February 13, 1911.

1. Rates on potatoes, cabbages, and vegetables, n. o. s., from Charleston, S. C., to New York, Boston, Philadelphia, Baltimore, and other northern markets found not to be unreasonable in themselves or when compared with the water-compelled rates on the same commodities from Norfolk and producing points in that district.
2. Rates from the same points of origin to the same destinations found not to be out of line with the current rates on the same commodities from Florida points; the control of these markets enjoyed by Florida growers shown to be due not to rates but to climatic and other conditions.

George F. von Kolnitz for complainant.

Ed. Baxter and *R. Walton Moore* for Atlantic Coast Line Railroad Company; Southern Railway Company; Richmond, Fredericksburg & Potomac Railroad Company; and Washington Southern Railway Company.

Frank W. Gwathmey for Southern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The complainant association, composed of farmers and planters in what is known as the Charleston district, in the state of South Carolina, alleges that the package and carload rates exacted by the defendants on cabbages, potatoes, beans, peas, and cucumbers from shipping points in that district to points in the states of Virginia, Maryland, Pennsylvania, New Jersey, New York, Massachusetts, and the District of Columbia are unjust and unreasonable. It is also alleged that the rates from Charleston to the same destinations are unduly discriminatory when compared with the rates from shipping points in the states of Georgia, Oklahoma, Texas, California, and especially when compared with rates from points in Florida, and from Norfolk, in the state of Virginia. Although the rate on lettuce is

also attacked in the complaint that contention was entirely abandoned on the argument, as was also the complaint against the current refrigeration charges on this traffic. The rates from points in Georgia, Oklahoma, Texas, and California were also abandoned on the argument as a basis for testing the Charleston rates.

While the rates complained of are those from Charleston proper and points in the Charleston district to various destinations, we shall, for the purposes of this report, confine our attention to the rates from Charleston to New York City, such shipments being in every way fairly typical of this traffic. At the time the complaint was filed these rates were as follows:

	Cents
Potatoes, per standard barrel or barrel crate, estimated weight 185 pounds:	
Carloads.....	55
Less than carloads.....	58
Cabbages, per standard barrel or barrel crate, estimated weight 120 pounds:	
Carloads.....	55
Less than carloads.....	58
Vegetables, n. o. s., per bushel box or package, estimated weight 50 pounds:	
Any quantity.....	30

The prayer of the petition is that rates may be established, to New York City, for example, on the following maximum basis:

	Cents
Cabbages.....per crate..	38
Potatoes.....per barrel..	53
Beans, peas, cucumbers, etc.....per basket..	23

At the hearing much testimony was offered tending to show the keen competition that exists between the vegetable producing sections of Florida and in the territories surrounding Charleston and Norfolk. As one of the witnesses expressed it, Florida and Norfolk are the "nightmares" of the Charleston growers. Florida cabbages enter the market early in January. Cabbage shipments from Charleston commence the latter part of March, and from Norfolk about the second week of May. By getting into the markets so much earlier Florida is not only enabled to avoid competition, but, being practically the only source of supply, it can demand and secure high prices for its crops. It is said that it even finds it profitable to ship after Charleston has commenced to ship. Norfolk, on the other hand, gets into the markets only a short time later than Charleston. But it enjoys a very material advantage over Charleston in its proximity to points of great consumption as well as in its substantially lower rates. The difficulty with Charleston is that, lying between the two competing producing districts, it is never able to gain complete control of the markets as is the case both with Florida and with Norfolk. Its shipping season is practically confined to the period between the latter part of March and the first ten days of May. By May 10 shipments from Norfolk

commence to move and Charleston is practically put out of the markets. One witness states that in 1909 he plowed under 10,000 crates of cabbages for the reason that he was "unable to get the freight out because Norfolk was in." It is said that fully one-half of the cabbage crop of Charleston, shipped at the 55-cent rate, must meet in the northern and eastern markets the competition of cabbages shipped from Norfolk at the 18-cent rate. The shipping season for beans starts from Charleston early in May and lasts only 10 or 15 days, not because there are no more beans to ship, but because, by reason of the competition north of Charleston, it is no longer profitable to ship them.

While the competition of the Florida traffic was discussed at some length on the hearing it was not pressed on the argument. Among the exhibits filed by the defendants was a table of rates applying on vegetables from representative shipping points in Florida, indicating, notwithstanding the longer distance, that the rate per ton per mile from points in Florida is in many instances higher than the rate per ton per mile from Charleston and points in that district. It will be remembered that the through rates from Florida points are made up of the rate to a basing point, such as Jacksonville, plus the rate from the latter point to destination. The through rate on potatoes thus made up from Ocala, for example, a point in Florida 1,074 miles from New York, is shown to yield a ton-mile rate of 1 cent, while the rate from Meggetts, a point in the Charleston district 762 miles from New York, is on the basis of 8.5 mills per ton per mile. Comparing the rate from Charleston with that from Jacksonville, both being basing points, it appears that the per-ton-per-mile rate from Charleston is 8 mills, while that from Jacksonville is 8.6 mills. According to this table the Florida cabbage rates, as well as the rates on vegetables, also yield a rate per ton per mile higher for the longer haul than the ton-mile rate from Charleston for a substantially shorter haul. When tested, therefore, by the Florida rates as shown on the exhibit in question we find it difficult to see on what grounds the Charleston rates may be condemned; and that apparently was the view of the complainants at the conclusion of the hearing, for, as stated, the Florida rates were not strongly urged on the argument as a basis for a reduction in the Charleston rates. The present any-quantity rates on vegetables from Florida points were examined in *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.*, 14 I. C. C. Rep., 476, and found by the Commission not to be unreasonable, although the carload rates there recommended were not put in effect until the carriers were so ordered in *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552. The rates from Charleston and points in the Charleston district can

not be adjusted on a lower basis, as we understand their present general relation to the Florida rates, without also readjusting the latter rates and revising the conclusions reached in the cases last mentioned. We are advised on this record of no reason for thinking that any mistake was made in those cases, and certainly it will not be contended in this proceeding that the present relation of rates as between Charleston points and Florida points is prejudicial to the Charleston growers unless we are expected so to adjust the Charleston rates as to overcome the natural advantages that the Florida growers have in climatic and other conditions.

The competition of Norfolk and the adjacent territory is apparently much more severe than the competition that the Charleston growers meet from the producing districts in Florida. The advantage that Norfolk enjoys in reaching the markets has been partially explained in what has been already said. There are some other facts, however, that should be mentioned:

It appears that notwithstanding its materially shorter haul the rate per ton per mile on these commodities from Norfolk is substantially less than the rate per ton per mile from Charleston, contrary to the general rule that the longer haul ought to yield lower rates per ton per mile. This is due, however, to the special conditions that surround the traffic when moving from Norfolk. In addition to the adaptability of the soil to an extensive production of vegetables, the proximity of the Norfolk truck farms to Richmond, Washington, Philadelphia, and New York, as well as its excellent water service to those points, have served to make it an important shipping center for vegetables. The great bulk of the vegetable traffic from Norfolk and adjacent territory moves by water. It is said, in fact, that vegetables shipped from Norfolk by steamship reach New York in about the same length of time as those shipped by rail from Charleston. And this actual water competition undoubtedly controls the Norfolk all-rail rates to the eastern markets. Charleston, on the other hand, seems not to enjoy the benefit of any strong competition by water to the markets in question. Potatoes are less perishable than many other vegetables, and there is an occasional movement by steamship to New York. The record shows that they can be moved satisfactorily in that way. But the Clyde Line recently handled some cabbages to New York, and they are said to have arrived in impaired condition. Apparently the water service on cabbages is not generally regarded as satisfactory from Charleston, and according to the record now before us few vegetables other than potatoes seem to move in that way from Charleston to any of these markets. Just why this should be the case is not clear, for it is our understanding that the coarser vegetables sometimes move by water to New York and other northern markets—even from Florida. Nevertheless it

definitely appears that such water traffic as does exist from Charleston is not extensive enough to affect the all-rail rates on any of these vegetables except potatoes. The explanation suggested on the argument was that the Clyde Line maintains no market on its New York wharf, and cargoes of vegetables moving by that line would therefore have to be trucked from its pier to one of the produce markets, a difficulty that the water lines from Norfolk seem to have avoided.

It is clear, therefore, that the Charleston rates on cabbages, beans, and other produce can not properly be tested by a comparison with the rail rates from Norfolk, which are controlled, as we have seen, by the active competition of carriers by water.

The relation of the rates on cabbages and potatoes moving from Charleston was discussed at some length on the argument as well as on the hearing. Both commodities take the same rate per package from that point, while from Norfolk the rate per package on cabbages to New York is substantially lower than the rate on potatoes. It was urged that a similar relation of rates as between cabbages and potatoes should obtain from Charleston, and under ordinary circumstances there would be some force in the contention. The defendants, however, assert that the Charleston potato rate is a water-compelled rate, and that a higher all-rail rate would divert the traffic to the water lines. And this view of the matter seems to be justified by the fact, heretofore alluded to, that potatoes may be shipped successfully by water, and the further fact that they occasionally actually move to the northern markets in that way.

Another point earnestly urged upon our attention by the complainant was that the rates in question are unreasonable when considered from the standpoint of the value of the commodities and the profits of those who cultivate them. In support of this contention much testimony was offered tending to show the average prices of these vegetables in the New York market. But particular stress was laid upon an exhibit offered by one of the Charleston planters showing that his net profits for 1908 were \$16 an acre, while the gross charges paid by him to the railroads for getting his produce to market amounted to \$60 an acre. For the following year his net profits seemed to have been the same, while the freight charges paid by him to the carriers are put at \$63 an acre. The same exhibit shows that while the witness lost \$40 an acre on 30 acres of land planted to cabbages in 1908, he made a net profit of \$19 an acre on 42 acres planted to cabbages in the following year. For 1908 his net profit on beans was but \$3 an acre, while for the following year his beans yielded him a net profit of \$52 an acre. During 1908 and 1909 he made no money on peas, but he assigned this result, not to the rates demanded by the carriers, but to the extensive competition

of the planters of peas at Beaufort, in the state of South Carolina. The record also contains much information as to the effect on the crops of the character and richness of the soil, the methods of cultivation, and the amount of fertilizer that is used. Weather conditions also play a no small part in the results accruing from the labors of the planters. It appears that in 1908 an extensive rainfall seriously affected the cabbage crop of the Charleston district, while in 1909 frosts destroyed about one-sixth of the lettuce crop. Cucumbers are often entirely destroyed by blight. One witness stated that he had not had a full crop for five years. But even when all these conditions are favorable and a bountiful crop is produced the difficulties of the planters are not ended. The markets are not infrequently glutted by produce from other quarters and losses result. There is sometimes also an overproduction in a particular district. In 1908, for example, more cabbages were produced in the Charleston district than could be disposed of to advantage, in consequence of which it was agreed by the planters to reduce the cabbage acreage for the following year by one-fourth.

All this testimony was introduced in order to show the conditions affecting the profits of the planters and in support of a theory, running through the examination of the witnesses by counsel for the complainant and commented on in his argument, that the rates are too high when considered in the light of the net returns to the planters of the Charleston district. After referring to the keen competition met from Norfolk and Florida and to the malarial and other unwholesome conditions existing in the Charleston district, counsel, speaking of the complainants, says in his brief:

It is of extreme importance that facilities and rates should be furnished which will enable them to dispose of their product with some slight degree of profit to repay them for the expenditure of capital and labor and risk of health which they are compelled to undergo.

Matters of this kind, while suggestive and worthy of consideration, are by no means controlling, as the Commission has taken occasion to say in several contested cases. In *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552, it was said:

The position of the growers is that such rates should be established as will permit them to market their products at a reasonable profit. No such test of the justness of a transportation charge can be admitted.

Much other testimony appears of record which it will not be necessary to consider here in detail. Exhibits were filed by the defendants showing among other things that their carload earnings on this traffic from Charleston are by no means excessive; the average on all shipments to eastern cities in 1909 is shown to have been, for March \$60.61, April \$71.76, May \$66.70, and June \$69.64.

The perishable nature of the traffic requires dispatch in its movement, regardless of the quantity ready to be carried. It is asserted that shipments of 5,000 pounds and even less are frequently forwarded to New York, on which the total carload earnings do not exceed \$25 or \$30. A record was found of one carload moving in 1909 that contained but 3,675 pounds of cucumbers, yielding a total revenue when laid down in New York of \$17.15. The total revenue on another car was but \$21.75.

After a careful consideration of the whole record and testing the Charleston rates by the conditions that surround the traffic, as well as by the rates and conditions surrounding the traffic from Florida and Norfolk, we have been unable to see that there are just grounds for disturbing the present adjustment. The largest vegetable grower in the Charleston territory, when questioned at the hearing, frankly said that the rates, in his judgment, did not interfere with the successful growing of vegetables so much as did the poor service of the roads. He admitted, however, that the service had improved, and other witnesses showed that large expenditures had been made by the principal defendant in order to give the growers of the Charleston district an adequate and prompt movement of their products to the markets.

Pending the hearing of this proceeding the defendant carriers readjusted their rates on vegetables, n. o. s., and in place of the any-quantity rates theretofore in effect established carload and less-than-carload rates, the latter rates involving a slight increase over the former any-quantity rates. Some evidence was offered tending to show that the withdrawal of the any-quantity rates makes a material difference to the shippers, but we do not find of record a sufficient basis on which to enter an order in that respect. The complaint will be dismissed, but should the actual experience of the growers under this adjustment of carload and less-than-carload rates on vegetables, n. o. s., lead them to the conclusion at the end of the present shipping season that they do not give satisfactory results the matter may be brought to our attention by a supplemental petition herein accompanied by a motion to reopen the record with respect to that phase of the present rate situation. It may be added here that in *Railroad Commissioners of Florida v. A. C. L. R. R. Co.*, Docket No. 3808, now pending, the gathering rates on vegetables from producing points in Florida to Jacksonville and other basing points are attacked as unreasonable. Should any action be taken in that case resulting in rates that appear to this complainant and to its members to be prejudicial to the Charleston growers when compared with the rates exacted of them the facts may be called to our attention upon a petition to reopen this proceeding.

An order will be entered in conformity herewith.

No. 2895.

W. F. MAXWELL

v.

WICHITA FALLS & NORTHWESTERN RAILWAY COMPANY ET AL.

Submitted January 10, 1911. Decided February 13, 1911.

Rates of 6½ cents per 100 pounds on house blocking, Burkburnett, Tex., to Devol, Okla., and 11 cents per 100 pounds on fence posts, Devol, Okla., to Olney, Tex., found unreasonable in so far as they exceeded, respectively, 3½ cents and 7 cents. Reparation awarded.

W. F. Maxwell for complainant in person.

C. L. Fontaine for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged at Randolph, Tex., in shipping forest products. His petition, filed October 11, 1909, alleges that unreasonable charges were exacted by defendants for the transportation of a carload of house blocking from Burkburnett, Tex., to Devol, Okla., and of a carload of rough fence posts from Devol to Olney, Tex. Reparation is asked.

On February 9, 1909, complainant shipped a carload of house blocking, weighing 37,300 pounds, from Burkburnett to Devol, a distance of 7.4 miles. The commodity in question consists of posts of short lengths used as pillars to support small frame houses. Defendants had no specific rate on house blocking, but under the so-called analogous article rule of Western Classification they applied their lumber rate of 6½ cents per 100 pounds, and collected total freight charges in the sum of \$24.25. A specific commodity rate of 3½ cents, Burkburnett to Devol, was established June 6, 1909, and is still maintained. Complainant asks reparation upon basis of the present commodity rate. Defendants deny that the rate assessed was unreasonable and resist the application for reparation.

Complainant calls attention to the fact that at the time his shipment moved defendants maintained a commodity rate of $3\frac{1}{2}$ cents from Burkburnett to Devol on rough fence posts. The $3\frac{1}{2}$ -cent rate on rough fence posts was established June 2, 1908, and maintained until October 24, 1910. On the latter date the commodity rate was canceled and superseded by the class D rate of 6 cents.

The Commission has repeatedly announced that the voluntary reduction of a rate is not of itself evidence of the unreasonableness of the rate so changed. But the facts of record are such that the rates here examined do not fall within this rule. No specific rate was in force when the shipment moved, and as soon as practicable, after that defect was brought to the attention of defendants' officers, they established a rate of $3\frac{1}{2}$ cents, which they still maintain. Under the circumstances it is fair to assume that the rate so established and maintained affords just compensation to the carriers. We find that the rate of $6\frac{1}{2}$ cents was unreasonable, in so far as it exceeded $3\frac{1}{2}$ cents, and that complainant is entitled to reparation in the sum of \$11.20, with interest from February 9, 1909.

On February 19, 1909, complainant shipped from Devol, Okla., to Olney, Tex., over defendants' lines, a carload of rough fence posts, 50,500 pounds in weight, which had previously been shipped from Tushka, Okla. A rate of 11 cents was assessed for the movement from Devol to Olney, and total charges collected in the sum of \$55.55. It is alleged that the 11-cent rate was unreasonable to the extent of 4 cents per 100 pounds.

An examination of the tariffs on file fails to disclose lawful authority for application of the 11-cent rate, or any other rate, to the movement from Devol to Olney. No through class or commodity rate was in force at time of shipment, and none appears to have been lawfully established until April 26, 1910, when a commodity rate of 11 cents on fence posts, Devol to Olney, was made effective. On October 24, 1910, the 11-cent commodity rate was superseded by a class rate of 20 cents. Defendants admit that the 11-cent rate upon complainant's shipment was made up in part by use of the Texas railroad commission tariff, which had not been filed with this Commission. Therefore the conclusion is unavoidable that, by the carriage of traffic in respect of which no rate had been published and filed, defendants unlawfully engaged in interstate transportation; but, as announced in *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C. Rep., 90, where a transportation service has been rendered, for which no tariff authority whatever exists, and where the shipper has paid the sum claimed by the carrier for that service, the Commission has jurisdiction to determine the reasonable charge for the service, and to order repayment of the amount in excess thereof collected by the carrier.

The distance from Devol to Olney is 65 miles. For the haul from Tushka to Devol, 312 miles, a rate of 11½ cents was collected. Contemporaneously, defendants maintained a rate of 3½ cents on fence posts, Frederick, Okla., to Burkburnett, Tex., a distance of 37 miles. Upon consideration of all the facts disclosed by our investigation we find that the 11-cent rate was, and the present 20-cent rate is, unreasonable for the comparatively short haul of 65 miles, and that a rate of 7 cents was a reasonable rate when the shipment moved and will be a reasonable rate in the future for the transportation of fence posts in carloads from Devol to Olney. We find, further, that complainant is entitled to reparation in the sum of \$20.20, with interest from February 20, 1909. An order will be entered accordingly.

20 I. C. C. Rep.

No. 2888.
FEDERAL SUGAR REFINING COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted April 13, 1910. Decided December 5, 1910.

1. A carrier is not warranted under section 15 of the act in making an allowance to one shipper who provides a facility and performs a service in the transportation of his own property, while refusing a similar allowance to another shipper, competing in the same markets and in the same line of business, who provides a similar facility and performs the same service in the transportation of his property.
2. The allowances paid by the defendants on the sugar brought by Arbuckle Brothers on floats and lighters to their regular freight stations on the Jersey shore, no allowances being paid to complainant on sugar brought by it on lighters to the same stations, result in inequalities, preferences, and discriminations and are unduly prejudicial to the complainant as a shipper over the defendants' lines in competition with Arbuckle Brothers in the same markets.
3. The fact that Arbuckle Brothers operate their dock in Brooklyn as a terminal for the defendants does not justify an allowance to them for lightering their sugar to the regular stations of the defendants on the Jersey shore so long as an allowance to the complainant for lightering its sugar to the same stations from Pier 24 is refused.
4. A receiving station operated for carriers by a competitor in the same line of business is not a reasonable facility of transportation to offer a shipper.

Ernest A. Bigelow for complainant.

H. A. Taylor, Douglas Swift, and Edgar H. Boles for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The general facts involved in this controversy were first brought to our attention in a proceeding under the same title reported in 17 I. C. C. Rep., at p. 40, where the Commission was divided, one member supporting the order then entered on the special grounds explained in his concurring opinion, while three members joined in a dissenting opinion. This complaint, presented not as a supplemental petition in the first proceeding, but as an original complaint, comes before us on an additional record and upon a new state of facts. We

are also asked in this connection to consider a petition for a rehearing of the former complaint.

A careful examination of the report of the majority in the original case and of the concurring and dissenting opinions will conduce to a more accurate understanding of the case as well as the grounds on which were based the divergent views entertained in the Commission upon the facts then before us. In disposing, however, of this new complaint it is our purpose to state the facts as they now appear and to consider the case *de novo* and upon the record as it now stands.

Among the several corporations and copartnerships engaged in the refining of sugar in and about the harbor of New York City the only ones that we are concerned with at this time are the complainant and a copartnership widely known as Arbuckle Brothers, which owns an extensive property at the foot of Bridge street in the city of Brooklyn having a frontage of 1,200 feet on East River and locally known among the shippers that use it as the Jay Street terminal of the defendants. Under a contract with the defendant carriers Arbuckle Brothers operate the property as a freight station for the defendants. For that use of the dock, and for their services in conducting it as a freight station and in floating and lightering shipments between the dock and the regular terminals of the defendants in Jersey City, Arbuckle Brothers receive from the defendants allowances ranging from 3 to 4½ cents per 100 pounds on all merchandise passing through the terminal, whether inbound or outbound. The floats and barges used in this service are owned by Arbuckle Brothers and all persons employed in the handling of the freight, on the water as well as on the dock, are on the pay rolls of that firm.

The property immediately adjoining the dock property is also owned by Arbuckle Brothers, and on it they have erected a large sugar-refining plant. No less than one-third of all the merchandise handled through the dock by Arbuckle Brothers in their capacity, as is here contended, as agents of the defendants, is sugar manufactured and owned by Arbuckle Brothers in their capacity as refiners and shippers of sugar. As shippers Arbuckle Brothers daily deliver at the Jay Street terminal a large tonnage of refined sugar for carriage to various interstate points of consumption. It is contended here that they receive their own sugar on their own dock as agents of the defendant carriers. In lighters, or on floats, owned by them but which, it is claimed, they operate as agents of the defendants, they carry their own sugar thence to the regular freight-receiving stations at the rail ends of the defendants on the Jersey shore. On every 100 pounds of sugar thus delivered at the Jay Street terminal by Arbuckle Brothers, as shippers, to Arbuckle Brothers, as agents of the defendant carriers, and lightered by them in the latter capacity, as is contended, across the river to the defendants' depots, Arbuckle

Brothers receive, as heretofore stated, an allowance of from 3 to 4½ cents. They receive similar allowances on the merchandise of other shippers handled through the Jay Street terminal in the same manner. It may be well here to add that the defendants assert that the Jay Street dock was made a railroad terminal in order to provide a freight station for the shipments of manufacturers and merchants in Brooklyn who have no dock of their own. And it is true that a substantial tonnage, said to be about two-thirds of the total tonnage now passing through the terminal, is of that character.

The complainant, the Federal Sugar Refining Company, is also a refiner of sugar and competes with Arbuckle Brothers in supplying that commodity to consumers in the interstate communities reached by the defendants and their connections. Its refinery is located at Yonkers. Adjacent to and connected with it the complainant owns a pier or dock. Yonkers, however, is outside the lighterage limits established by the defendants in New York Bay and the two rivers, which together form what we have referred to as the harbor of New York; and the complainant therefore does not enjoy from its dock the benefit of the free-lighterage service offered by the defendants, under their tariffs, to shippers to and from piers that are within the limits. It is said that the complainant may reach the destinations in question, and in most instances at the same rates, by delivering its sugar to the New York Central at Yonkers, whence it can be carried to Sixtieth street and floated across the harbor to the receiving stations of the defendants on the west side of North River. It is asserted, however, and this we take to be established of record, that, for various reasons and because of delays in the handling of shipments, the complainant has found by actual experience that it can not successfully meet the requirements of its patrons by using that route. And it has been compelled to find other means for delivering its refined sugar to the defendants at Jersey City. It has therefore entered into an arrangement with the Ben Franklin Transportation Company for lightering its sugar to the same freight depots of the defendants west of the river to which Arbuckle Brothers lighter their sugar.

Under the arrangement in effect at the time its first petition was before us, the sugar was lightered by the Ben Franklin Transportation Company directly from the complainant's dock at Yonkers to the defendants' freight depots on the Jersey shore. But since our report in that proceeding was announced the method of handling the traffic has been changed, and the arrangement upon which this complaint is based was agreed upon and carried into effect by the two companies. It becomes necessary, therefore, at this point to explain the conditions under which the complainant's sugar now reaches the defendants at their receiving stations west of the river.

Since its incorporation in 1907 the complainant has maintained its general offices at 138 Front street, in the city of New York, where all its accounts and records are kept, except such as pertain to the actual operation of the refinery at Yonkers. Here its president and other executive officers and their subordinates are located and the actual business of the company is conducted. The only employees at the refinery are those engaged in the operation of the plant, including the superintendent, the checkers, weighers, samplers, shipping clerks, etc. The books kept at the refinery are tally books, weighers' books, samplers' books, records of meltings, and similar documents and papers that pertain to the actual conduct of the refinery. The records of the financial operations of the company, the sales of its products, and all its general correspondence are kept at the general offices.

For fifteen years the Ben Franklin Transportation Company has been a lessee of a portion of Pier 24, in North River, at the foot of Franklin street, the other portions of the pier being rented to other water lines. It is an independent company engaged in a general light-erage and towing business on the Hudson River. It seems not to be affiliated, either in fact or in origin, with the complainant and to have no intercorporate relations with it. One of its officers is said to own 10 shares of the common stock and 170 shares of the preferred stock of the complainant company. With that exception, which may be disregarded as having no significance, the only relation between the two enterprises rests on the contract between them under which the transportation company undertakes to lighter the sugar of the complainant, first to Pier 24 and thence, as it may be directed, to the Jersey City terminals of the defendants and to receiving stations of other water and rail lines. This work is carried on by it substantially as follows:

A lighter reports every morning at the dock of the complainant at Yonkers and receives such sugar in barrels, boxes, or other packages as may be ready for shipment. The superintendent of the refinery, having been previously advised from the company's general offices in New York City of the quantity of sugar required in order to fill accepted contracts, has the sugar ready at the stringpiece and it is loaded into the lighter by employees of the transportation company. The officer in charge of the lighter gives a receipt for the shipment and in return is handed a document showing the complainant as the consignor at Yonkers and the consignee at 138 Front street. It also gives the contract numbers, together with the weight and description of the packages. The lighter then proceeds with its load to Pier 24, which, as heretofore stated, is within the lighterage limits. It is there made fast to the dock and notice of its arrival is given at the general offices of the complainant. Thereupon the complainant issues

shipping instructions to the transportation company and hands to its representative a bill or bills of lading for execution by the defendant carriers upon the delivery of the sugar on the Jersey shore. Upon receiving these instructions and the bills of lading the lighter proceeds to the freight depots on the Jersey side and there makes delivery of its cargo, by unloading the sugar upon the car platforms of the carrier or carriers named in the lading papers. The bills of lading are executed by the carriers and returned to the lighterman.

For its services in taking the sugar first to Pier 24 and then, after receiving instructions and the bills of lading, in carrying it across the river and making delivery at the rail ends of the defendant carriers, the Ben Franklin Transportation Company, under its contract with the complainant, demands and receives 3 cents per 100 pounds. As Arbuckle Brothers receive from the defendant carriers an allowance of from 3 to 4½ cents per 100 pounds upon delivering their sugar across the river at the same freight depots, the complainant contends that the defendant carriers subject it to an unlawful discrimination when they decline to make it similar allowances for delivering its sugar to the defendants at the same place and in the same manner. That is the point of controversy to which our attention has been directed in both these proceedings. On the record in the former proceeding, as heretofore explained, it appeared that the lighterage movement commenced at Yonkers, which is outside the lighterage limits. On the record now before us the complainant contends that the lighterage movement to the receiving stations west of the river commences at Pier 24, where the complainant gives its shipping instructions to the lighterage company. Without entering here upon any discussion of the importance of the fact in the disposition of this proceeding, it will suffice to say that we accept the complainant's contention that the sugar is now being lightered to the defendants at Jersey City from Pier 24, which is inside the lighterage limits. The lighter is actually made fast to that pier when it arrives from Yonkers; sometimes a portion of its cargo is discharged there and held in storage, presumably for local use; the lighterman has no authority to go further or any instructions for a further movement, and must wait there for authority and instructions; upon receiving orders he lighters the cargo as directed, sometimes to one station and sometimes to another, the cargo not infrequently being divided among the several receiving stations across the river, or being delivered to water lines or railroads other than the defendants, all in accordance with the instructions received at Pier 24.

The one fact that stands out prominently upon this statement of the case is that it costs the complainant 3 cents per 100 pounds to

tender its sugar to the defendants at their regular receiving stations on the Jersey shore, being the points where the actual rail transportation begins, while the defendants relieve Arbuckle Brothers of any such expense by paying them the ample allowances heretofore mentioned. Around this fact the whole controversy turns. As manufacturers and shippers of sugar, the complainant and Arbuckle Brothers are competitors in the markets reached by the defendants. Under the arrangement heretofore described the defendants return to Arbuckle Brothers the full cost, and apparently something more than the cost, of lightering their sugar across the river. They refuse to bear this burden for the complainant. And the question is whether this condition of affairs, as between the two competing shippers, results in an undue and unjust prejudice and disadvantage to the complainant. In its actual financial and commercial results there can be no doubt that the complainant is at a disadvantage in competition with Arbuckle Brothers with an adverse margin against it of from 3 to 4½ cents per 100 pounds. But is it as a matter of law such an undue and unjust prejudice and discrimination as is condemned and made unlawful by the act?

In support of the agreement between the defendants and Arbuckle Brothers it is urged that the defendants require a freight station on the Brooklyn shore, and that the dock belonging to Arbuckle Brothers is well situated for the purpose, and is, and has been, and in the future will continue to be, a convenience to shippers. This may be conceded without being conclusive either as to the legality or the good faith of the relations at present subsisting between the defendants as carriers and Arbuckle Brothers as shippers. In the past, as we know from various investigations and from an examination of old tariffs, Havemeyer & Elder, the predecessors of the American Sugar Refining Company the dock of which is also involved in this proceeding, for many years enjoyed illegal preferences at the hands of the carriers. It is also our understanding that when Arbuckle Brothers began to compete with the Havemeyer refineries, these allowances were extended to them, apparently under some sort of verbal arrangement. It was not until after the enactment of the so-called Elkins law that the lighterage allowances on sugar from the Arbuckle piers seem to have been published. They were then limited to sugar and coffee, being the commodities in which Arbuckle Brothers were interested; and they were paid, as the tariff states, "on account of the peculiar physical situation at the water front adjacent to the Arbuckle refinery," a statement that has not been satisfactorily explained to the Commission although commented upon at the hearing. The allowances at both piers seem therefore to have had their origin in an unlawful preference of these great shippers. Apparently it was not until some years afterwards

that the two piers were made public receiving stations of the defendant carriers. And it is sought to justify the allowances now paid to Arbuckle Brothers and the withholding of similar allowances to the complainant, on the ground that a substantial use is now made of the Arbuckle dock as a public terminal for handling the traffic of other shippers. It is contended that the allowances are unobjectionable at this time, either upon moral or legal grounds, because Arbuckle Brothers, as agents of the defendants, are now handling the merchandise of other shippers through their dock, and therefore may lawfully receive allowances on their own shipments as well as upon the shipments of others.

It is our observation that such arrangements are rarely entered into with small shippers, but usually only with shippers that are financially strong and control a large traffic. As is pointed out in the dissenting opinion in the first of these proceedings (17 I. C. C. Rep., at p. 51), an instance of this nature was developed in the investigation entitled "*In the Matter of Allowances for Transfer of Sugar*," 14 I. C. C. Rep., 619. It appeared in the course of that inquiry that the Pennsylvania Railroad Company has a wharf in Brooklyn immediately adjoining the Brooklyn Eastern District terminal, a property of the Havemeyers, who were said to be closely affiliated with the American Sugar Refining Company. This dock will be considered later in this report. It will suffice at this point to say that, in the investigation referred to, the freight-traffic manager of the Pennsylvania Railroad Company frankly admitted that his company, notwithstanding the proximity of its own dock, had made the Brooklyn Eastern District terminal its terminal also and, in order to get a share of the sugar tonnage of the Havemeyer refinery, had agreed to pay lighterage allowances on sugar shipped from that dock. Defining the transaction in the plainest terms the Pennsylvania Railroad Company simply purchased its part of the traffic of that very extensive shipper; and, in view of the allowances then being made by other carriers, it could get a portion of the tonnage in no other way. This matter, as well as the fact that the original allowances given to the Arbuckle Brothers were limited to sugar and coffee, the commodities in which they deal, are here recalled for the purpose of emphasizing what seems to be clearly established by the records of the Commission, namely, that the allowances were originally extended to these large shippers in order to put them on a preferred basis. It was not until after the regulating body had been strengthened by additional legislation that the two docks seem to have been designated, in the published tariffs of the defendants, as railway terminals and were thus made to subserve the convenience of such of the general shipping public in Brooklyn as might be able to use them.

These dock properties may make convenient terminals for a substantial amount of general traffic, but it is somewhat singular that with the entire Brooklyn river front available, and much of it equally convenient, the two docks, one directly owned by Arbuckle Brothers and the other by persons having supposedly very close relations with the American Sugar Refining Company, apparently the only sugar refineries now in operation in Brooklyn, should have been selected for railroad terminals. The explanation lies undoubtedly in the fact that sugar moves westbound from New York City in larger volume probably than any other commodity; indeed, we were recently advised in another connection by the well-informed general counsel of one of these defendants that sugar constitutes almost one-third of all the traffic moving westward from that point of origin. If this estimate is even approximately accurate, it was a traffic that skillful shippers could readily turn to their advantage under the demoralized conditions prevailing when these allowances were first paid. Under the better conditions now generally prevailing it is a traffic that the defendants ought to be prepared to receive and handle with their own facilities. But, instead of acquiring or renting these or similar dock properties and operating them as terminals with their own employees, they have contracted for their operation by these great shippers and interests that are closely allied with great shippers. And, notwithstanding the very extensive fleet of tugboats and barges owned and used by the defendants in the harbor of New York, contracts have also been made with the private interests that own the two docks to do the lightering. It is impossible to conclude on all the information before us that these continued relations between the defendant carriers and great shippers and interests closely allied and largely identified with great shippers, are wholly disinterested, however much of a convenience the docks may now be to some of the general shipping public.

It is also urged that the investment of Arbuckle Brothers in their dock property approximates \$1,200,000, and that the net earnings from its operation in 1907 as a terminal for the defendants amounted to but \$85,566.84, this being only slightly in excess of 3 per cent on the investment, nothing being allowed for interest and depreciation. Net earnings, as everyone knows, vary with the character and extent of the items embraced on the expense side of the account. But the accuracy of these figures may be admitted without bringing us any nearer to a solution of the problem presented to us by the complainant. The fact will still remain that Arbuckle Brothers, as shippers of sugar over the lines of the defendants, enjoy a substantial advantage over its competitor, a shipper of sugar over the same lines to the same destinations. As owners of a dock property that is doubtless growing rapidly in value, their arrangement

with the defendants enables them to hold and carry it at a substantial net profit and at the same time reimburses them for the cost of delivering their sugar to the defendants on the west shore of the river for carriage to interstate destinations. The defendants decline to reimburse the complainant for the cost of delivering its sugar at the same receiving stations under substantially similar conditions.

But we are told that if the defendants should now purchase the Arbuckle dock and operate it as a freight station with their own agents and employees, and do the floating and lightering across the river with their own equipment, the Arbuckle refinery would still have the advantage of its proximity to the dock, and Arbuckle Brothers would still have their lighterage done free of charge, as would all other shippers to and from that terminal; while the complainant would continue under the disadvantage of having to lighter its sugar from Yonkers either to the regular receiving stations of the defendants west of the river or to the Jay Street terminal, or to some other point within the lighterage limits where the sugar would be accessible to the free-lighterage service now performed in New York Harbor by the defendants. And this is regarded as a conclusive demonstration that the discrimination alleged by the complainant can not be undue, as this phrase is used in the act. The discrimination, it is said, can not be undue or unjust under the act when by a mere change in the title of the dock property, from the alleged preferred shipper to the carriers, the discrimination would be eliminated while the complaining shipper would be left in precisely the position in which it now is. There is only an apparent force, however, in that point of view. As well might it be said that the payment to a shipper of an unlawful rebate is not an undue preference because, if stopped, the competitor will still be under the obligation of paying the lawful rate. Moreover, the tendency of the suggestion is to favor such relations between carriers and particular large shippers, when in the general interest such relations ought to be discouraged. Under that view a carrier desiring the traffic of a large shipper may relieve him of his expense for teaming by making his warehouse a terminal depot and himself an agent for teaming his own shipments to its regular station, as well as the shipments of others that find it convenient to use the new depot. And, as we are told, it would suffice to say of such a condition of affairs that it could be no undue discrimination against the competitors of the favored shipper, because, if the ownership of the warehouse should pass from the favored shipper to the carrier, his competitors would still require teams for delivering their shipments either at that depot or at the carrier's regular receiving station.

We can not accept that as a controlling view of such a state of facts as is here shown to exist. A carrier may doubtless wrongfully give a great shipper a substantial advantage by buying or renting

his warehouse adjoining his factory or place of business and making it a public receiving station, thus relieving him of the expense of hauling his merchandise by wagon to its regular receiving station. And possibly under the act as it now stands we would be powerless to redress the wrong, if the public made actual use of the new station, unless the price paid or the rent reserved were excessive and the transaction was therefore intended as an unlawful rebate as well as a continuing daily advantage to that shipper. But when the carrier engages the shipper to operate his warehouse as a railroad terminal and in the arrangement gives him advantages in handling his own traffic that are denied to his competitor, the test proposed, as above described, does not satisfy the principles underlying the act, as we shall see more fully later in this report.

The complainant contends that in lightering their sugar to the Jersey shore and there delivering it to the defendants, Arbuckle Brothers perform what the complainant refers to as a purely accessorial service. We incline to think this a sound view of the matter upon the facts shown of record. Neither the actual possession of their sugar nor their relation to it is in any respect changed until it is delivered into the physical possession of the defendants at Jersey City. This fact is clearly developed upon the record. Arbuckle Brothers handle the sugar out of their own refinery to their own dock and themselves deliver it to the defendants west of the river, using in the process only property and facilities that are owned by them and employees that are paid by them. Moreover, under the terms of the contracts between them and the defendant carriers none of the duties, obligations, responsibilities, or liabilities of common carriers attaches to the defendants, with respect to the sugar of Arbuckle Brothers, until the defendants have actually received it at their regular freight stations west of the river. Yet it is here contended that, through some sort of alchemy in their provisions, these contracts transmute Arbuckle Brothers from shippers into carriers' agents while they are in the act of delivering their own sugar to themselves at their own dock. We are not necessarily controlled, however, by the face of those documents or by the merely superficial relation that they purport to establish between these shippers and the defendant carriers, if, as seems to be abundantly clear upon a reading of their provisions, the real and actual relation of Arbuckle Brothers to the defendants, so far as their own sugar is concerned, is that of shippers, up to the moment of time when they physically deliver their sugar to the defendants on the Jersey shore. The contracts expressly provide that until that moment the sugar is to be handled by Arbuckle Brothers at their own risk, and only from that moment does the carrier's risk begin. It is only when the defendants actually accept and physically take possession of the sugar at their receiving stations west of the

river that they agree to, and do in fact, assume the liabilities of common carriers with respect to the sugar of Arbuckle Brothers. Much therefore may be said in support of the theory that at that point and at that moment is the relation of shipper and carrier between the defendants and Arbuckle Brothers actually established, and that only at that moment of time do the mutual liabilities and responsibilities attending that relation spring into being.

When the real essence and meaning of the contracts are arrived at there seems to be no substantial difference in the manner in which the defendant carriers accept the complainant's sugar and the manner in which they accept the sugar of Arbuckle Brothers for transportation. Both companies deliver their merchandise to the defendants on the Jersey shore at their own risk, one from Jay street and the other from Pier 24, one in lighters that it owns and the other in lighters that it hires. At that point and at that moment of time the liability of the defendants as common carriers for both shippers commences. Up to that point there is no "transportation" of the sugar, as the complainant contends, but only an accessorial service by each shipper in delivering its own merchandise to the carrier for transportation. It is then that an actual contractual relation between the two refining companies as shippers and the several defendants as carriers is entered into. If therefore we are to disregard, as necessarily we must if this act is to be enforced in its letter and spirit, the merely superficial relation sought to be created on the face of the contracts in question, and turn our attention to the actual relation that they establish, the only difference, upon a most careful analysis, between the complainant with respect to its sugar and Arbuckle Brothers with respect to their sugar, is that under the contracts Arbuckle Brothers are called the agents of the defendants when handling their own sugar, and get an allowance for delivering it to the carriers across the river, while the complainant does the same thing and gets no allowance but makes the delivery at its own expense. The fact that Arbuckle Brothers ordinarily load their sugar into cars on the dock and sometimes float empty cars across the river for loading seems to be a mere incident to the preferred basis upon which they have been put as shippers over the defendant lines, and can not be regarded as materially differentiating them and their sugar from the complainant and its sugar shipments.

"But," say the defendants in substance, "we have converted the dock of Arbuckle Brothers into a regular freight station, and there receive a large tonnage from other shippers which Arbuckle Brothers at our expense lighter to our rail ends west of the river. We shall be glad to have them do this for the complainant, if it will deliver its sugar to us at the Arbuckle dock." This suggestion has not made a favorable impression upon us. To offer the complainant a receiving

station on the dock of powerful competitors, where its shipments would be handled and billed out by the competitors, thus exposing to them the names of the complainant's customers, its markets and the course of its business, is a suggestion that overlooks the duty of impartial service by the defendants to all their shipping public. Moreover, under recent amendments, the law has thrown its protection around the shipper and in express terms makes it unlawful for an interstate carrier to "disclose his business transactions to a competitor." And if effect is to be given to this wholesome principle the complaint can not be said to be satisfied by the tender to the complainant of the Arbuckle dock as a receiving station for its sugar, and the tender of Arbuckle employees, as agents of the defendants, to make out the lading papers and other transportation records, to assess and collect the freight charges, and to handle the complainant's sugar to the defendants' freight stations on the west shore. To throw a shipper in this manner into the hands of competitors in the same line of business is utterly at variance with fairness as well as with the express provisions of the law. It is true that there may be traffic as to which such a state of affairs would make little difference. But we think it clear that the Arbuckle dock may no more be regarded as a reasonable freight depot for the complainant than would the Brooklyn Eastern District terminal, operated in the interest of the American Sugar Refining Company, be tolerated by Arbuckle Brothers as a freight station of the defendants. If its refinery were immediately across the street the complainant could not be expected to accept the Arbuckle dock as a receiving station of the defendants so long as it is operated by competitors in the same line of business. A receiving station operated by a competitor is not a reasonable facility of transportation to offer to any shipper.

So far as the general shipping public is concerned, the Arbuckle dock may doubtless now be regarded as a public receiving station of the defendants. But if, for the reasons stated, it is not entitled to be regarded as a public receiving station so far as the complainant and its sugar are concerned, may it be regarded as any other than the private dock of Arbuckle Brothers when they, as shippers, and their own sugar are concerned? If it is operated under conditions that prevent it from being a legal receiving station for all shippers of sugar that might care to use it, we do not see how it may fairly be regarded as a public receiving station of the defendants for the sugar of Arbuckle Brothers. We have therefore been inclined, as heretofore stated, to regard the lightering of their own sugar across the river as an accessorial service by Arbuckle Brothers from their private dock, and not as a service of transportation from a public receiving station of the defendants. And this view of the matter is emphasized by the contracts, heretofore alluded to, which attach to

the defendants a liability as common carriers of Arbuckle sugar only from the moment of time when they actually receive possession of it at their regular station west of the river. It is not necessary, however, to draw fine distinctions between an accessorial service and a service of transportation, as applied to the facts in this case. If the allowances made by the defendants subject the complainant to an undue discrimination, or give Arbuckle Brothers, their competitors, an unjust preference, a wrong is being done that must be redressed by an appropriate order, whether the allowances are paid as for an accessorial service or for a service of transportation. We shall therefore now consider the matter briefly from the latter point of view.

Arbuckle Brothers not only operate their dock for the defendants as a railway facility, but they also perform the lighterage service between the dock and the regular stations of the defendant on the west shore. And the defendants insist that the sugar of Arbuckle Brothers, like the general merchandise of other shippers received at their dock, commences to move at that point; and that when Arbuckle Brothers lighter their own sugar across the river they are simply performing a service of transportation with facilities of their own furnished by them for the purpose. The defendants point out that the only way they have of serving the cities of New York and Brooklyn is by a lighterage system radiating to all points within the limits that they have established in the harbor of New York; and that under their lighterage tariffs they are common carriers to and from every dock and pier within those limits. Their view, then, is that the Arbuckles have the right, instead of using their own dock, to tender their sugar to any one of the defendants at any other dock, whether public or private, within the established limits; and to require that defendant, upon the payment by them of the New York rate, to float or lighter it to its regular receiving station on the Jersey side; and therefore if the defendants, by their published tariffs, have placed themselves under the duty of lightering the Arbuckle sugar from the New York side at the New York rate, that service, when performed by one of the defendants, is a part of its transportation service from that side of the river. The conclusion necessarily following these premises, as the defendants thereupon insist, is that the lighterage of the Arbuckle sugar from the New York side, when performed by the Arbuckles themselves, is also a service of transportation and not an accessorial service, and therefore may be paid for by the defendants under section 15 of the act on a just and reasonable basis.

We had not regarded section 15 of the act as a warrant to a carrier for making an allowance to one shipper providing a facility and performing a service in the transportation of his own property, while refusing a similar allowance to another shipper providing a similar

facility and performing the same service in the transportation of his property. Nor had we understood that a carrier, while giving to one shipper the privilege of providing a facility and performing a service in the transportation of his property, could refuse the same privilege to another shipper, and compensate the former while refusing any allowance to the latter. Nor is that the law. Certainly it can not be the law when the two shippers are competitors in the same line of business and in the same markets. If the defendants accord Arbuckle Brothers the privilege of lightering their sugar from their dock and make them an allowance therefor, we regard it as axiomatic, under the principles of this legislation, that they must accord a like privilege and make a like allowance to the complainant from Pier 24, the complainant being a competitor in the same line of business and reaching the same markets of consumption. Indeed, we see little ground, upon the facts now before us, for denying the privilege and the allowances to the complainant from the point where its sugar crosses the lighterage limits established by the defendants. That, however, is a question that need not be discussed, for we have found that the complainant now lighters its sugar from Pier 24 which is within the lighterage limits.

The defendants, however, insist that the provisions of section 15 need not necessarily have so broad a construction. Their view is that the privilege of furnishing the facilities and performing a part of the transportation service may be accorded, and the payment therefor made, to one shipper without laying the carrier under the obligation of according the same privilege and making a similar payment to another and competing shipper who provides a similar facility and performs a similar service in the transportation of his property. "If the Jay Street terminal," they declare, "is to be operated as a public station, the handling of the Arbuckle shipments through the terminal and by the equipment of the terminal (*i. e.*, by the Arbuckles), as all other shipments are handled, must be viewed as a natural incident to that operation." Inasmuch as the Jay Street terminal has been established "it should be open," they say, "to all shippers without discrimination. * * * To require the Arbuckles to deliver their shipments at some point distant from the terminal, there to be picked up and transported to the Jersey terminal by railroad equipment, would be a strained and unnatural proceeding, and a discrimination against the Arbuckles." It would be equally strained, as we are told, to require the defendants, after having made the Arbuckles their agents in operating the Jay Street terminal, to set aside that arrangement with respect to the Arbuckle sugar and handle it with railroad employees and with railroad equipment. This, they say, would be both inconvenient and expensive. From that point the argument of the defendants proceeds easily and rapidly

to the proposition that, when a carrier, by an agreement with a great shipper, turns his dock into a railroad terminal and has it operated for it by the shipper, the circumstances and conditions surrounding that shipper and his particular traffic differ from the circumstances and conditions surrounding another shipper, although competing in the same line of business, "who does not furnish public terminal facilities for the carrier;" and that such a situation justifies the carrier "in permitting the shipper who operates a public terminal for it to perform such terminal service on his own shipments while refusing to permit a shipper who does not operate a public terminal to perform a similar part of the transportation service." In other words, as we gather the point of view of the defendants, the very arrangement that makes a railroad terminal of the dock owned by, and adjoining the refinery of, these shippers, and saves them the cost of teaming or otherwise conveying their immense traffic to a public terminal operated by the carriers themselves, also erects around those shippers a bulwark of dissimilar circumstances and conditions that justifies the carrier in giving them the further privilege of providing their own facilities for lightering their shipments across the river, thus performing also a part of the transportation service, and being compensated therefor by ample allowances; while the privilege is withheld from another shipper who is their competitor in the same line of business.

That contention can not be admitted as sound. On the contrary, we hold that when a carrier undertakes to have such a terminal operated for it by the owner of the property and the owner happens also to be a large shipper over its line, the law reads into the agreement between the carrier and the owner the peremptory requirement that the arrangement shall not result in any undue and unjust discrimination against other shippers competing with the owner in the same line of business. The prohibition of inequalities among shippers is perhaps more fundamental and vital than any other feature of the act. And when a carrier undertakes to supply its needs by private contract with a shipper—whatever may be its purpose, and however plainly it may be grounded in good faith, or however clearly it may spring from the practical necessities of the carrier—by giving him certain opportunities and advantages in the handling of his traffic over its lines, those opportunities and advantages may not lawfully be withheld from his competitors. However straightforward the relation between a carrier and a shipper may be, it is essentially wrong, and violates the provisions of the statute against preferences and discriminations, when the carrier endeavors under such a private contract to turn the shipper into its agent, and thus, whether purposely or incidentally, gives him privileges and advantages in connection with the transportation of his property that are withheld from his

competitors. If such a transaction is conceived in bad faith and works unlawful results, it is manifestly unlawful. But good faith will not save it from like condemnation if it involves preferences and discriminations that are undue and unjust. It is not the intention of the parties but the actual results that flow from the arrangement that constitute the test. And we find that the terms under which the defendant carriers accept the sugar of Arbuckle Brothers at their regular stations west of the river do result in inequalities, preferences, and discriminations, and are unduly and unjustly prejudicial to the rights of the complainant as a shipper of sugar over the lines of the defendants in competition with Arbuckle Brothers in the same markets.

We are told that the contention that a discrimination is being practiced against the complainant "could be forcibly urged * * * if the refinery of the complainant had been located within the lighterage limits," and that the "trouble of the complainant springs from its location without the free lighterage limits." So far as the record gives us any light on the matter the complainant is not seeking to ship its refinery over the lines of these defendants; the whereabouts of the refinery is therefore wholly nonessential and of no possible concern to anyone. It is the sugar that the complainant is offering for shipment, and it is offered from a point that is within the lighterage limits. It may have been manufactured in the Philippines, or brought in from Porto Rico, or imported from Germany. This particular sugar happens to have been refined at Yonkers. But wherever it may have been made, the relevant fact from a transportation point of view is that at a given moment a quantity of sugar is at Pier 24 ready for shipment to interstate destinations on the lines of these defendants. It matters not how it got there, whether by lighter or by cart or by wheelbarrow; it is ready for shipment at that point. At the same time a like quantity of sugar is ready at the Arbuckle dock for shipment over the same lines and to compete in the same markets. Under every principle of equality embodied in this legislation the defendants must deal with the two shippers on exactly equal terms. They must themselves lighter the sugar to their regular freight stations across the river with their own equipment, or must accord to each shipper the privilege of doing the lightering in his own way; and if under section 15, or under any other provision of the act, they pay an allowance to one of the two shippers, on the theory that he has furnished a facility and performed a part of the transportation service for the defendants, they must make a like allowance to the other shipper who has done precisely the same thing. To say that the defendants have made an agent of one shipper to do the lightering for it and have not established that relation with the other serves but to emphasize the

discrimination, and seems neither to reach the equity and common justice of the situation, nor to constitute even a superficial compliance with the equality of privilege, service, and rate that the law requires of carriers in their contact with interstate shippers.

The sugar of the two competing shippers gets into the actual physical possession of the defendants on the Jersey shore under practically similar conditions, and if, as the defendants contend, the Arbuckle sugar commences to move at the Arbuckle dock, it must be remembered that the defendants also contend that their transportation for the general public also extends to and commences at every other pier and dock within the lighterage limits that they have established. If, then, the defendants permit Arbuckle Brothers to furnish the lighterage facilities for their own sugar and perform the lighterage service across the river, and if this is to be regarded as a part of the transportation offered by the defendants under their tariffs, it is difficult to see upon what theory the defendants may defend their refusal to recognize the lighters hired by the complainant as its facilities in performing for the defendants a similar part of the transportation service. It seems to us very clear that the payment of allowances to one of these competing shippers, for a service of transportation alleged to be performed by them for the defendants with their own facilities, creates a present actual and substantial inequality that is unlawful under the act, when similar allowances are refused to the other and competing shipper for an exactly similar service. The suggestion that if the Arbuckle dock should now be purchased, or rented and operated by the defendants, and if the defendants should use their own lighters in moving the Arbuckle sugar across the river, the disadvantage under which the complainant rests would not be removed, does not meet the conditions that actually exist and which, in our judgment, present an actual present undue discrimination in the relations of the defendants with the two shippers. The Arbuckle sugar moves either from the Jersey side or the New York side of the river. If its transportation commences at the New York side, as the defendants contend, then it appears that Arbuckle Brothers, besides being paid for using their own dock as a receiving station for their own sugar, are also accorded the privilege of providing the lighters and performing a part of the transportation service on the sugar, namely, from the dock to the regular receiving stations of the defendants west of the river; it also appears that they are well and amply paid for this service and the use of their facilities. The complainant, on the other hand, does precisely the same thing from another dock within the lighterage limits and is refused any compensation at all. That is the actual situation before us as revealed upon the record. And it is that situation with which we must deal. We shall not undertake at this time to consider what rate question

or other problem might be presented if the defendants should buy or lease and operate the Jay Street terminal for themselves and perform the lighterage to and from that terminal with their own equipment and with their own employees. If the present allowances paid to Arbuckle Brothers are a fair measure of what it would really cost the defendants to put the Arbuckle sugar on the Jersey side with their own equipment, the question might arise as to the reasonableness, from the standpoint of these competing refineries, of having identical rates on sugar from both sides of the river. But no such question is before us at this time.

On the whole record we hold that when the complainant, as hereinbefore described, tenders its sugar to the defendants on lighters at their regular receiving stations on the Jersey shore it must be received and carried thence to destination on rates, terms, and conditions that are no less favorable to the complainant in any particular than the rates, terms, and conditions governing and surrounding the sugar traffic of Arbuckle Brothers brought by them on floats and lighters to the same stations for carriage to the same destination.

The complainant also charges that a similar allowance paid to the owners of the so-called Brooklyn Eastern District terminal, owned by Havemeyer interests, also subjects it to undue prejudice and disadvantage. It is at this dock that the output of the American Sugar Refining Company is largely handled. But, although our understanding had been to the contrary, we were told at the hearing that the Havemeyers owned only an insignificant amount of the capital stock of that company. Accepting these statements at their face value, we need not at this time consider that phase of the complaint. Nor, in view of our conclusions herein, is it necessary to consider the petition for a rehearing of the former case under this title to which allusion has been made.

An order will be entered in conformity with these conclusions; and upon the filing of a detailed statement properly checked by the defendants a further order will be entered allowing reparation to the complainant in accordance with the prayer of its petition.

KNAPP, *Chairman*, dissenting:

I do not perceive that the record in this case presents any different question from the one decided in the former case between the same parties, 17 I. C. C. Rep., 40. Indeed, in one aspect the facts now presented seem to me less favorable to complainant, since it appears in this proceeding, by the explicit avowal of its counsel during the oral argument, that the transfer of the Jay Street terminal to the defendant carriers and its operation by them would result in no benefit to complainant. This being so, as must be assumed from the admission made, I do not see how the ownership and operation of that

terminal by Arbuckle Brothers constitutes undue preference to them or undue prejudice to complainant. I therefore dissent upon the general grounds set forth in the majority report in the former case.

PROUTY, *Commissioner*, also dissenting:

I do not agree to the disposition made of this case, and while the opinion of the Commission in the original case, *Federal Sugar Refining Co. v. B. & O. R. R. Co.*, 17 I. C. C. Rep., 40, gives a correct and perhaps sufficient account of the question presented, I wish to add a word in view of the claim that this record presents a new state of facts.

So far as disclosed there are three sugar refineries in New York and vicinity, namely, the Federal Sugar Refining Company, the complainant, whose factory is located at Yonkers, N. Y., and Arbuckle Brothers, and the American Sugar Refining Company, the factories of the two latter being located in Brooklyn, N. Y. The complainant contends that the defendants by their rates discriminate against it in favor of its two competitors.

• Yonkers, where the factory of the complainant is located, is without the free lighterage limits of New York, while the plants of Arbuckle Brothers and the American Sugar Refining Company are both situated within those limits. The original complaint alleged that Yonkers should also be included within these lighterage limits, and the discrimination alleged in that complaint was the failure of the defendants to so extend their lighterage service.

Upon a full presentation of the matter the Commission held that the New York lighterage limits ought not to be extended to include Yonkers, and that the defendants were within their lawful rights in declining to embrace the factory of the complainant within those limits. This must be kept continually in mind.

It is equally important to have ever in view the full significance of that holding. From all points within the lighterage limits the New York rate of the defendants applies, but that rate does not apply from points without those limits unless the point is located upon the line of some one of the defendants. Under this rule, the propriety of which is unquestioned, the American Sugar Refining Company and Arbuckle Brothers are entitled to have their sugar lightered free at the New York rate to the rail termini of the defendants in Jersey City and Hoboken.

The plant of the complainant at Yonkers is upon the tracks of the New York Central system, and its product for all points reached through that system and its connections can be loaded from the storehouse into the car, but there are many points which can not be satisfactorily reached by this route, and for which the complainant finds it necessary to make use of the lines of the defendants; and in that

event the sugar of the complainants must be transported by lighter from the plant at Yonkers to the rail termini at Jersey City, in the same way that the sugar of its competitors must be lightered from their plants to Jersey City, but inasmuch as its plant is without the free lighterage limits the complainant is put to the expense of that lighter service.

Arbuckle Brothers and the American Sugar Refining Company have therefore a transportation advantage over the complainant with respect to their sugar shipped by the defendant lines through Jersey City, which arises out of the location of their plants and which this Commission has held and still holds is legitimate. The Federal Sugar Refining Company has, doubtless, from its location at Yonkers certain advantages over its rivals. Its factory may have cost it less; its rents may be less; it may find labor conditions more favorable. It has immediate access to the rails of one of the great railroad systems of this continent and for all points upon that system or its connections its product can be transferred from the warehouse to the car. But to offset these advantages it labors under the transportation disadvantage of being compelled to lighter its own product to Jersey City, while the product of its rivals is carried free.

It is repeated through page after page of the majority opinion that the complainant is at a transportation disadvantage in comparison with its competitor, Arbuckle Brothers. Most certainly it is, and this Commission has held that this disadvantage is not improper.

Starting, then, with the proposition that with respect to all sugar handled over the lines of the defendants through their rail terminals upon the west bank of the Hudson River, the complainant is properly at a disadvantage as compared with its competitors located in Brooklyn, it may be asked, What further disadvantage against the complainant does the record in this case disclose? If any, it arises out of the following situation:

Arbuckle Brothers own an extensive dock in Brooklyn and the floating equipment for lightering to and from that dock. An arrangement has been made by these defendants with Arbuckle Brothers under the terms of which traffic of all kinds is handled over this dock to and from the rail termini of the defendants at Jersey City. The dock is known as the Jay Street terminal of these defendants. Arbuckle Brothers are the agents of the various defendants in the operation of that terminal. As compensation for the lightering of this traffic and the transaction of the terminal business connected with receiving and delivering the same, Arbuckle Brothers are paid a fixed sum per 100 pounds, which is 3 cents where the traffic is intended for certain destinations and 4½ cents for certain other destinations.

With respect to this contract certain facts should be noted.

It applies to all traffic of all kinds, both in and out, originating at or intended for that part of Brooklyn. As I remember the testimony about one-third of the outbound traffic consists of the product of Arbuckle Brothers, the other two-thirds being miscellaneous business. A much less per cent of inbound business is for Arbuckle Brothers.

When outbound traffic is presented for shipment over the line of one of the defendants a bill of lading is issued in the name of that defendant. This is, of course, signed by an employee of Arbuckle Brothers for the railroad company, but it is in all respects the act of the company and binding upon it. If, for example, a consignment of sugar were to be offered for shipment by Arbuckle Brothers over the line of one of these defendants and if that sugar were lost in transit from the dock to the Jersey shore, the railroad would be responsible to the consignee for the delivery of the property. Under the contract between Arbuckle Brothers and the railroad, the railroad would have a claim against Arbuckle Brothers for the amount of the loss, but, as between the shipper and the railroad, Arbuckle Brothers are unknown.

The price paid is by the hundred pounds and depends not on the character of the traffic but on the destination, being 3 cents per 100 pounds in some instances, and 4½ cents in others. It is in no sense an allowance to Arbuckle Brothers for the lighterage of their sugar, except as that sugar may constitute about one-third of the total outbound business handled through that terminal.

The case finds, and this is not disputed, that under the actual working of this contract Arbuckle Brothers do not receive an excessive return for the service performed.

Just how, then, does this contract violate the act to regulate commerce?

To permit a shipper to receive from a railroad compensation for any part of the service of transportation undertaken by the railroad is a fruitful source of favoritism and discrimination. This has always been recognized by all students of the subject, and Congress, in view of this fact, might very well have prohibited all transactions of this kind. Had it done so the mere fact that Arbuckle Brothers are the owners of a substantial part of the traffic moving through this terminal would render the operation of the contract unlawful.

Congress has not done this. The Commission in calling the attention of Congress to the wrongs which grew out of this connection between the shipper and the railroad, itself stated that there might be instances in which it was for the interest of the general public that some portion of the transportation service should be performed by the owner of the property, and that, for this reason, the better way seemed to be to make sure that the compensation paid the shipper for the performance of this service was not extravagant. Whether in-

fluenced by this suggestion or not, Congress did, in the Hepburn amendment of 1906, provide that where the shipper rendered a part of the transportation service the Commission might inquire what would be a reasonable compensation for that service and fix a limit which should not be exceeded by the carrier; thereby expressly recognizing the right of the carrier to employ the shipper about the transportation of his own property, provided the compensation paid for that service was not unreasonable.

This very instance before us furnishes a good illustration of the necessity for this provision. Dockage property in Brooklyn is extremely valuable, and it might be both difficult and expensive for these various defendants to create proper freight terminals in that locality. This dock with its floating equipment was available. It gave to the public facilities much needed, and it enabled the defendants to provide those facilities on favorable terms to themselves. There is no apparent reason why these defendants should not be allowed to select this economical and efficient method of affording adequate public facilities for receiving and delivering freight in this locality, unless some wrong is done to some member of the shipping public.

While, however, it seems plain to me that Congress has not prohibited arrangements of this kind when no element of wrong is involved, I do not think that such a situation is lawful if it creates an undue discrimination in favor of the party who handles the business and receives the compensation, even though the compensation be not excessive. There is, therefore, the further question of fact, Does the operation of this contract give to Arbuckle Brothers an advantage over the Federal Sugar Refining Company? If it does, in my opinion it should be prohibited; if it does not, then in the interest of the public and of these defendants, it should be sanctioned.

It is said that Arbuckle Brothers get free transportation for their sugar from this dock to Jersey City, while the complainant is obliged to lighter its sugar at its own expense. This certainly is true, but for the reason that the factory of Arbuckle Brothers is within the lighterage limits while that of the complainant is without—a situation which this Commission has approved.

It is suggested that Arbuckle Brothers are large shippers, while the complainant is a small shipper. The record does not show the relative shipments of these two refineries; nor did I suppose that this was material. It has been my understanding that under this act which we administer great shippers and small shippers stand exactly alike. I had not supposed hitherto that if a great shipper happened to be located within the free lighterage limits of New York his greatness was a reason for depriving him of the benefit of free lighterage.

It is said that Arbuckle Brothers handle their own sugar. But how does this benefit Arbuckle Brothers, provided the sum which they receive for that service is no more than a reasonable one?

It is urged that the compensation paid is more than is reasonable. It is quite possible that the amount received per 100 pounds for handling this sugar is more than would be just if nothing but the Arbuckle sugar was handled through the Jay Street terminal, but the contract for the operation of that terminal applies to the entire traffic, of which the Arbuckle sugar is but a fraction. That traffic is of all kinds and the expense of handling some kinds much exceeds that of others. What Arbuckle Brothers gain on sugar is lost on other kinds of business, provided the entire result is not too favorable. If the defendants have a legal right to make this arrangement we must, in passing upon it, consider it as a whole, and not select a particular item of traffic in inquiring whether the price paid for the service is too high.

Several things conclusively show that the trouble of the complainant springs from its location without the free lighterage limits, and not from the circumstance that the Jay Street terminal is operated by Arbuckle Brothers.

Counsel for the complainant deliberately stated upon the argument that his client would be in no respect benefited if the operation of that terminal were to pass into the hands of a third party or were to be taken over by the defendants themselves. If, then, the complainant is not damaged by the arrangement as it exists, why should we interfere with that arrangement which appears to be for the common benefit of the public and of the railways?

The situation of the American Sugar Refining Company is equally in point. Most of the raw sugar which is refined is received or may be received by water, and much of the product may be sent out by water. A sugar refinery is almost of necessity accessible to extensive dockage facilities, and this is true in case of the American Company. These docks were owned and operated by Havemeyer, the president of that company, and the complainant made the same claim upon the hearing with respect to the Sugar Trust that it made with respect to Arbuckle Brothers, upon the theory that Havemeyer was the principal owner of the American Sugar Refining Company. It turned out in evidence that the stock holdings of Mr. Havemeyer in that company were insignificant, and his connection with the company has since been entirely severed, so that, to-day, there is no community of ownership between the person operating the terminal through which its sugar is handled and the refining company itself.

It was practically conceded by the complainant, and is perfectly evident without any concession that the American Sugar Refining

Company enjoys, under the present arrangement, precisely the same advantage over the complainant as do Arbuckle Brothers, and it is further evident that both companies would enjoy this advantage were Arbuckle Brothers compelled to retire from the operation of the Jay Street terminal.

It may be suggested in this connection that the Sugar Trust would not be likely to sit idly by if the arrangement at the Jay Street terminal worked a discrimination against it, in favor of its most active rival.

Since the promulgation of the opinion of the Commission in the original case a new feature has been introduced into this situation, to which, perhaps, some reference should be made.

Originally the complainant lightered its sugar from its factory at Yonkers to the rail termini of the defendants at Jersey City by the steamer *Ben Franklin*. The various packages were marked by the complainant and put on board the steamer at Yonkers. The skipper was provided with bills of lading or receipts for signature by the various railroads over which the shipments were to pass, and he transported these packages from Yonkers to Jersey City, made delivery to the various railroads, and obtained his receipts, which were returned to the complainant.

At the present time the packages are marked and loaded upon the *Ben Franklin* at Yonkers, precisely as before; but the cargo is now consigned to the complainant at Pier 24, which is on the New York side of the Hudson River and within the lighterage limits. The steamer proceeds to Pier 24 and ties up, whereupon a representative of the complainant steps on board, gives the captain of the *Ben Franklin* a receipt for his cargo, and delivers to him the blank receipts or bills of lading which were formerly put into his possession at Yonkers. After this has been done the steamer proceeds to Jersey City and makes delivery to the various rail lines.

It is claimed by the complainant, and apparently found by the Commission, that this amounts to a transportation of this sugar from Pier 24 to Jersey City.

The transaction, in fact, is precisely the same now that it was formerly, except that the steamer now stops at Pier 24. Great stress is laid in the opinion upon the fact that the *Ben Franklin* is actually made fast to the wharf, but to my own mind it would subserve exactly the same purpose if she were to whistle in midstream when passing that pier. It is impossible for me to understand how any performance of this character can change the actual relation of these parties when the thing accomplished is in both cases identical.

If the complainant saw fit to put its sugar onto Pier 24 and to notify the defendants to come there and receive it, a different question might be presented. Their traffic would then be within the free

lighterage limits, and it is possible that, having selected docks adjacent to the refineries of the competitors of this complainant, the defendants could not refuse to take the sugar upon this dock.

In order to avoid all misapprehension, let me repeat that we ought not, in my opinion, to sanction the arrangement for the operation of the Jay Street terminal, if that results in discrimination against this complainant. It is evident that this situation might take various forms, where it could be forcibly urged that such discrimination existed. If, for example, the refinery of this complainant had been located within the lighterage limits, and these defendants by selecting for their terminals in Brooklyn docks adjacent to the refineries of its two competitors had compelled this complainant as a practical matter to lighter its product to the Jersey shore, either because that could be done more cheaply than to deliver it at the Brooklyn terminals or because those terminals were operated by its competitors, who, by handling the traffic of the complainant, would acquire an improper knowledge of its business, serious questions would be presented; but there is nothing of the kind in this case. The only disadvantage here which has been pointed out or which can be pointed out arises from the location of the complainant without the lighterage limits. That was its complaint in the original case, and that is the gravamen of its complaint here. Since the Commission has decided that the free lighterage limits of New York ought not to be extended so as to include Yonkers, and since it appears that the arrangement at the Jay Street terminal is in the general public interest, I do not think this Commission should make any order which will prevent these defendants from continuing that arrangement.

20 I. C. C. Rep.

No. 3376.
AUDLEY HILL & COMPANY ET AL.
v.
SOUTHERN RAILWAY COMPANY.

Submitted February 1, 1911. Decided February 13, 1911.

1. The presumption of reasonableness arising from the long existence of a rate does not necessarily attach when the rate was established by the carrier, in the exercise of its discretion, to meet competitive conditions.
2. Rate of 20 cents per 100 pounds on bananas from Charleston, S. C., to Augusta, Ga., not found to have been unreasonable. Complaint dismissed.

R. J. Southall for complainants.

R. Walton Moore for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants, Audley Hill, trading under the name of Audley Hill & Company, and Arthur H. Merry, trading under the name of Merry & Company, are engaged in the wholesale produce business at Augusta, Ga. By joint petition, filed July 6, 1910, they attack the reasonableness of freight charges collected from them by defendant for transporting a number of carloads of bananas from Charleston, S. C., to Augusta, Ga. Reparation is asked.

Between May 4, 1909, and January 7, 1910, Audley Hill & Company shipped from Charleston, S. C., to Augusta, Ga., 12 carloads of bananas, aggregating 248,400 pounds, and between November 9, 1909, and December 31, 1909, Merry & Company shipped between the same points 4 carloads of bananas, aggregating 87,900 pounds. Freight charges amounting to \$496.80 and \$175.80, respectively, were collected on basis of rate of 20 cents per 100 pounds.

Charleston, S. C., and Savannah, Ga., are competitors for general business at Augusta and for a long time have had the same rates to that city. The testimony is that between Savannah and Augusta the rates are controlled by water competition of the Savannah River. No bananas move from Savannah to Augusta either by rail or by water as the character of the commodity requires peculiar facilities

for its handling in bulk and such facilities do not exist at Savannah. The water competition, therefore, is potential only, with respect to bananas, but it receives consideration in fixing the banana rate. From early in 1902 until May 3, 1909, a rate of 15 cents obtained on bananas to Augusta from both Charleston and Savannah. In territory intermediate to Augusta, Ga., and Columbia, S. C., there is naturally competition among banana dealers of the two cities. From Charleston to Columbia there is no water competition and the rate for a number of years was 20 cents, although the distance is about 9 miles less than to Augusta.

This situation obtained for a long period, and the testimony is that the Columbia shippers, in November, 1908, complained to the South Carolina railroad commission alleging discrimination against Columbia as compared with Augusta, and thereupon the South Carolina commission, on February 25, 1909, established a rate of 15 cents from Charleston to Columbia. On the assumption that the complaint of the Columbia shippers would have been satisfied by placing Columbia and Augusta on a parity, defendant increased the rate from Savannah to Augusta to 20 cents, a like increase being made from Charleston to Augusta, effective May 3, 1909. With the Augusta rate thus raised to equal the former Columbia rate, defendant then applied to the South Carolina commission for authority to restore the 20-cent rate to Columbia, but the application was denied. On February 18, 1910, defendant restored the 15-cent rate to Augusta, and that rate is still effective. Except for an interval of less than 10 months—May 3, 1909, to February 18, 1910—the 15-cent rate to Augusta has been continuously in effect for more than nine years. Defendant asserted that it would not have been changed but for the aforesaid action of the South Carolina commission, and contended that the 15-cent rate was unreasonably low.

Although the Commission has held that the long existence and use of a rate is an important fact tending to show that it is sufficiently high and properly requires the carriers to explain or justify an increase thereof, the evidential force of such a showing is weakened when the rate has been established on account of competitive conditions which the carrier, in the exercise of its discretion, might lawfully meet but which it might not be required to meet. In *Lindsay Bros. v. B. & O. S. W.*, 16 I. C. C. Rep., 6, we said:

While water competition may be availed of by a carrier as its justification and excuse for rates that are lower than would otherwise be lawful under sections 2, 3, or 4 of the act, the existence of such competition is not in itself a ground upon which a shipper may demand a lower rate. It is the privilege of a carrier, in its own interest, to meet such competition, but it is not the privilege of a shipper to demand less than normal rates because of the existence of a competition which the carrier in its own behalf does not choose to meet.

See also *Breese-Trenton Mining Co. v. Wabash R. R. Co.*, 19 I. C. C. Rep., 598.

The testimony is that bananas are perishable and have to be moved with passenger-train dispatch in refrigerator cars, for which, empty or loaded, a rental of three-fourths of a cent per mile is paid. At the expense of the carriers, these refrigerator cars are equipped with slats, bulkheads, and false floors. In many instances these cars are returned empty, and a sufficient supply must be parked at the port awaiting arrival of the vessel. Complainants obtain their bananas principally from Mobile, but occasionally from New Orleans or Baltimore. The banana movement from Charleston is sporadic and light, fruit vessels not plying there with any regularity. Nevertheless, several years ago defendant constructed a fruit wharf at that port at an expenditure of \$25,000.

Under Southern Classification bananas take the third class rate, which from Charleston to Augusta is 28 cents. Under the Georgia classification bananas are sixth class and take a rate of 28 cents for the distance from Charleston to Augusta.

Upon the whole record we are of the opinion and find that defendant's rate of 20 cents per 100 pounds is not shown to have been unreasonable or excessive. The complaint must be dismissed, and it will be so ordered.

20 I. C. C. Rep.

No. 3263.
CRESCENT LUMBER COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted February 1, 1911. Decided February 24, 1911.

Two routes, over which the same rate applied, were available from points of origin to destination. Over one of said routes reconsignment in transit was permitted by proper tariff publication, but such reconsignment was not permitted over the other route; *Held*, That, in the absence of routing instructions by the shipper, or notice that its shipments were to be reconsigned in transit, the initial carrier is not liable in damages for failure to forward the traffic over the route via which the reconsignment privilege was available.

G. B. Neville for complainant.

R. Walton Moore for Illinois Central Railroad Company and New Orleans, Mobile & Chicago Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the lumber business at Meridian, Miss. Its petition, filed May 4, 1910, alleges the collection from it by defendants of excessive freight charges on eight carloads of yellow-pine lumber shipped from points in Mississippi to Cypress, Ill., and thence reconsigned to various destinations. The complaint was filed with the Commission informally on March 12, 1909. Reparation is asked.

Between June 12, 1907, and August 27, 1907, complainant shipped from several stations on line of defendant New Orleans, Mobile & Chicago Railroad eight carloads of rough yellow-pine lumber consigned to itself at Cypress, Ill., "care of Chicago & Eastern Illinois Railroad." Cypress is reached only by the Chicago & Eastern Illinois Railroad, and to that point two routes taking the same rates were available, one via Meridian, Miss., and the Mobile & Ohio Railroad, the other via Ackerman, Miss., and the Illinois Central Railroad. No intermediate routing was designated by the shipper, but the lumber was loaded in cars which the New Orleans, Mobile & Chicago had received from the Illinois Central and which, under car-service rules, had to be returned via the Illinois Central. Accordingly, the initial

carrier routed each shipment via Ackerman and the Illinois Central, and the latter road hauled the traffic through Cairo to Carbondale, thence south to Marion, Ill., the nearest junction with the Chicago & Eastern Illinois. Each car, upon arrival at Marion, was tendered by the Illinois Central to the Chicago & Eastern Illinois. Six were refused and two that had been accepted were returned, the basis for this action being that there was no lumber industry at Cypress, and the Chicago & Eastern Illinois would not accept cars consigned to that point unless accompanied by instructions for reconsignment. Cypress was a fictitious destination, and complainant's only object in first consigning the shipments to that point was to conceal from its customers the source of supply. On all cars so consigned it was complainant's custom to send request for reconsignment to the agent of the Cincinnati, Hamilton & Dayton Railroad at St. Louis, who had undertaken to transmit such request to the Chicago & Eastern Illinois. The Cincinnati, Hamilton & Dayton was compensated for this service by receiving a portion of the haul whenever practicable.

On various dates subsequent to the arrival of the cars at Marion and refusal by the Chicago & Eastern Illinois to accept them, the agent of the Cincinnati, Hamilton & Dayton at St. Louis gave to the Illinois Central orders to reconsign the cars. Bills of lading were then issued by the Illinois Central for the movement to the new destinations and seven of the cars were transported to Chicago via that line, Chicago being the final destination of six of the shipments. One car, destined to St. Clair Springs, Mich., moved from Chicago via the Grand Trunk and Michigan Central, while the other, destined to Cleveland, Ohio, moved via Illinois Central to Tuscola, Ill., thence via Cincinnati, Hamilton & Dayton and Wheeling & Lake Erie. At destinations charges were assessed at a combination of joint rates based on Marion.

The reparation asked is based on the joint rates from points of origin to final destinations applicable via Meridian and the Mobile & Ohio. The tariff naming those rates provided, effective July 13, 1907, that such shipments might be reconsigned in transit at the through rate, a charge of \$5 per car being made for the privilege. To this tariff the Illinois Central was not a party. The tariff naming the rate via the route of movement did not allow reconsignment at the through rate. The action of the Chicago & Eastern Illinois in refusing shipments at Cypress is therefore immaterial, the question being whether or not the shipments were misrouted by the initial carrier. As previously stated, two routes taking the same rate were available. The initial carrier can not be charged with knowledge of complainant's desire to reconsign the shipments, and in the absence of specific routing by shipper we hold that the initial carrier was justified in routing these cars as it did.

Under the circumstances we are of opinion and find that the charges on complainant's shipments were collected in accordance with the tariff in force and that such charges are not shown to have been unreasonable or excessive. The complaint must be dismissed, and it will be so ordered.

No. 3438.

CRESCENT LUMBER COMPANY

v.

MOBILE & OHIO RAILROAD COMPANY ET AL.

Submitted December 3, 1910. Decided February 13, 1911.

A transit privilege that was effective for eighteen months and withdrawn through misunderstanding between carriers, and after a period of two and one-half months restored and continued in effect, can not be regarded in the same light as a newly established transit privilege and does not come within the inhibition regarding the retroactive application of such privileges. Reparation awarded because of unreasonable charges on a shipment moving during period within which transit privilege was not allowed.

G. B. Neville for complainant.

R. Walton Moore for Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the lumber business and has its principal office at Meridian, Miss. By petition filed July 30, 1910, it attacks the reasonableness of a combination rate of 41 cents per 100 pounds charged for carriage of a carload of yellow-pine lumber from Eddy, Ala., to Columbus, Ohio, which was milled in transit at Meridian, Miss., and asks reparation to basis of joint rate of 28 cents, with transit privilege. The complaint was first presented to the Commission informally December 24, 1908.

On September 21, 1907, complainant shipped over the lines of defendants from Eddy, a station on the Alabama & Mississippi Railroad, one carload of rough yellow-pine lumber, weight 34,000 pounds,

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consigned to Cypress, Ill., to be dressed en route at Meridian. Before arrival at Cypress the car was reconsigned to Columbus. Charges amounting to \$127.55 were assessed. The only rate applicable was a combination rate of 41 cents, under which the charges should have been as follows:

	Rate per 100 pounds.	Weight.	Charges.
	Cents.	Pounds.	
Eddy to Vinegar Bend.....	5	84,000	\$17.00
Vinegar Bend to Meridian.....	8	84,000	27.20
Meridian to Columbus.....	28	180,000	84.00
. Total	41	.....	128.20

¹ Minimum on dressed weight.

There was also effective at time of shipment a joint rate of 28 cents from Eddy to Columbus, but the tariff which provided for dressing at Meridian had no application to shipments originating on the Alabama & Mississippi Railroad. From March 3, 1906, to August 21, 1907, however, the joint rate of 28 cents on lumber from stations on the Alabama & Mississippi Railroad, including Eddy, to Cypress, Columbus, and other points on and north of the Ohio River, carried the privilege of dressing at Meridian. Under the transit provision this rate applied as follows: Eight cents on the rough weight to Meridian and 20 cents on the dressed weight out, minimum 30,000 pounds. On August 21, 1907, due to misunderstanding between the carriers, this transit privilege was withdrawn, but was restored on the 4th of the following November and is still effective.

The joint rate of 28 cents from Eddy to Columbus has been continuously in force for nearly five years, and, except for an interval of about two and one-half months, during which period complainant's shipment moved, the tariff provided for dressing in transit at Meridian. A transit privilege which was effective for eighteen months and through misunderstanding between the carriers was withdrawn for a period of two and one-half months and then restored and continued in effect, can not be regarded in the same light as a newly established transit privilege and does not come within the Commission's rule against awarding reparation which amounts to the retroactive application of a transit privilege.

Under all the circumstances we are of the opinion and find that the charges paid by complainant were unreasonable and excessive to the extent that they exceeded \$87.20, based on rate of 28 cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$40.35, with interest thereon from October 31, 1907. An order will be entered accordingly.

No. 3474.

WALTER F. BOYLE

v.

GREAT FALLS & OLD DOMINION RAILROAD COMPANY.

Submitted October 28, 1910. Decided February 13, 1911.

Defendant's system of commutation fares does not unduly discriminate against complainant or the community in which he resides.

Walter F. Boyle for complainant in person.

Wilton J. Lambert for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of McLean, Va., a station on the Great Falls & Old Dominion Railroad. His petition alleges, in substance, that the commutation fares between Washington, D. C., and stations in defendant's so-called third zone are unreasonable and unjustly discriminatory as compared with similar fares between Washington and stations in defendant's second zone; that restriction of the commutation fare to tickets good for only 52 trips per month is unreasonable and that defendant should be required to issue commutation tickets which will permit a round trip each day in the month. At the hearing complainant stated that he did not consider the fares excessive in themselves, but that he believed the adjustment to be unduly preferential to the second zone.

The defendant operates an electric or trolley line which extends from the western part of the city of Washington across the Potomac River and thence to Great Falls, Va., a distance of about 15 miles. For purposes of rate making the line is divided into five zones of about 3 miles each. The single fare between stations in any one zone is 5 cents, and 5 cents is collected for each zone beyond; that is to say, the fare from the first to the second zone is 10 cents, to the third zone 15 cents, etc., except that in the first zone defendant sells six tickets for a quarter, the fare established by law within the District of Columbia. The commutation fares between Washington and

points in the several zones, and the cost per trip under those fares, are as follows:

Fares from and to Washington.

	52-trip, monthly.	Cost per trip.
Zone 1, Washington to Cherrydale, inclusive.....	\$1.56	\$0.08
Zone 2, Harrison to Chesterbrook, inclusive.....	2.08	.04
Zone 3, El Nido to Balls Hill, inclusive.....	3.90	.075
Zone 4, Hittaffer to Belleview, inclusive.....	4.68	.09
Zone 5, Rocky Run to Great Falls, inclusive.....	5.72	.11

McLean, the station at which complainant resides, is in the third zone and about 7 miles from defendant's terminal in Washington. If he rode only between McLean and the Washington terminal he would receive 364 miles of transportation for \$3.90 under the 52-trip commutation fare; but on the trip to Washington he is entitled to a transfer that is good within the District of Columbia on the lines of the Capital Traction Company. As a matter of fact he uses this transfer for a 2½-mile ride to the Post Office Department, which is approximately the center of the business section. The result is that, for \$3.90 per month he rides 429 miles at a rate of less than a cent per mile. Transfers would be of no advantage on the outbound trip, and complainant uses one of the car tickets above referred to from the Post Office Department to defendant's terminal. Upon the facts before us that fare can not be condemned as unreasonable for the service performed; and the carrier's annual reports indicate that its entire schedule of fares has resulted in a relatively small return upon the amount of money said to have been invested in the railroad.

As we have noted complainant conceded that the only ground upon which the fares to and from the third zone could be alleged to be unlawful was by comparison with the relatively lower fares to and from the second zone. As will be observed by examination of the table above set forth, the 52-trip commutation fare from the first zone is \$1.56, and the increases above that amount are: Second zone, 52 cents more than first zone; third zone, \$1.82 more than second zone; fourth zone, 78 cents more than third zone; fifth zone, \$1.04 more than fourth zone. Complainant contends that the ratio of increase for each succeeding zone should be the same.

The record shows that the number of commutation tickets sold in the zones from 1 to 5, respectively, for the month of October, 1910, were 4, 144, 43, 21, and 18. Substantially the same relation between the number of tickets sold from each zone has existed since December 1, 1908. Defendant contends that the fare from the second zone is too low and ought to be increased. In its answer it states that the commutation fares were agreed upon after hearing before the Corporation Commission of Virginia; that the fare submitted for approval

was \$2.60; and that at the request of that commission the fare was reduced to \$2.08.

Whether or not a rate adjustment results in undue discrimination against a particular person or locality is a question of fact which must be decided upon consideration of all the circumstances brought to our knowledge. Upon this record we can not find that the present adjustment of commutation fares is unduly prejudicial to complainant. Nor do we find that the sale of commutation tickets providing for only 52 trips per month is unjust. The practice is common to all zones, and is designed to permit use of the commutation fares on all working-days. Having found no apparent violation of the act, it is unnecessary in this connection to consider defendant's suggestions respecting the scope of the Commission's authority over commutation fares. The complaint will be dismissed.

20 I. C. C. Rep.

No. 3498.
MUSE BROTHERS COMPANY
v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY.

Submitted December 15, 1910. Decided February 24, 1911.

The provision in a tariff on low-priced cotton-factory products specifically named, requiring the articles to be plainly marked on the outside of packages and stated in shipping receipt or bill of lading, not found to be unreasonable. Complaint dismissed.

G. M. Stephen for complainant.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation with its place of business at Junction City, Ark., engaged in buying and selling dry goods, alleges by petition filed August 29, 1910, that unreasonable transportation charges were assessed on a shipment of four cases and five boxes of cotton fabrics shipped to it at Junction City from Memphis, Tenn. Reparation is asked.

The shipment weighed 3,840 pounds and the rate charged was 82 cents per 100 pounds, making a total of \$31.49. It was stated upon the hearing that a further bill had been rendered upon basis of a rate of \$1.02 per 100 pounds, which was the rate applicable under the tariff, but there is no evidence that this bill, if presented, has been paid. The particular ground upon which this case rests is the assertion by complainant that the tariff effective at the time this shipment moved named a commodity rate of 58 cents per 100 pounds, which was applicable to this shipment. The provision for this commodity rate in the tariff reads as follows:

Cotton-factory products as shown below, any quantity: .

Any of the following-named articles, made wholly of cotton, when specific names of articles are plainly marked on outside of packages, and stated in shipping receipt or bill of lading (marking or describing packages as containing "cotton-factory products" will not be sufficient).

Then follow 34 specific items, such as backbands, webbing, calicoes, canton flannels, etc.

No bill of lading was presented at the hearing. The statement of the complainant's witness is that the shipment was billed—and the freight bill so shows—as “cotton fabrics.” The witness, who is not, and was not at the time, connected with the complainant, and who had no personal knowledge of the facts, said:

The shipper states that they have a rubber stamp, stating that “This case contains nothing but cotton fabrics in the original piece.” This is stamped on all shipments. * * * I can state from my own information, because I was at one time located in Memphis and solicited business from these people, and I know that to be a fact, that they label their packages and have this rubber stamp. * * * I can't state what it [the shipment] consisted of specifically, but the shipper—the receiver states that it consisted of cotton fabrics in the original piece, exclusively.

When asked if he knew whether the specific articles in the shipment would come under the designation prescribed by the tariff, he answered: “No; I couldn't say to that positively.” It can not be seriously contended that evidence of this character even tends to prove the material questions of fact here involved, namely, the actual contents of this shipment, whether the cases or boxes were marked so as to show their contents, or whether the contents were stated in the shipping receipt or bill of lading, as required by the tariff.

Upon the hearing counsel for complainant asserted that the provision in the tariff requiring the names of articles to be plainly marked on outside of package and to be stated in the shipping receipt or bill of lading was unreasonable in itself and because it did not apply to all territory.

In the New England states and in other territory cotton fabrics move upon class rates, while in portions of the southern territory special commodity rates, lower than class rates, are applied to the coarser and cheaper cotton products. Counsel for defendant stated that this commodity rate is intended to apply only to coarser and cheaper cotton-factory products, and, as these are shipped in boxes or cases, the requirement that the package should show on the outside the specific contents by naming the articles under the general designations named in the tariff is proper for the protection of the carrier. There are cotton products of a higher grade, and it is not intended that they should be carried at the low commodity rate named. To require a compliance with this provision by the shipper does not appear to the Commission to be unreasonable or unduly discriminatory. The complaint must be dismissed, and it will be so ordered.

No. 3258.

W. L. GUMM

v.

EL PASO & ROCK ISLAND RAILWAY COMPANY ET AL.

Submitted January 10, 1911. Decided February 24, 1911.

A rate of 94 cents per 100 pounds charged for the transportation of empty beer bottles in carloads from Capitan, N. Mex., to El Paso, Tex., found to be unreasonable in so far as it exceeds 15 cents per 100 pounds in carloads, minimum weight 20,000 pounds, which is established as the maximum rate for the future from Capitan and points intermediate to El Paso.

Rufus B. Daniel for complainant.

Hawkins & Franklin for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, who is engaged in business at Carrizozo, N. Mex., filed a petition May 3, 1910, assailing as unreasonable and unlawful a rate of 94 cents per 100 pounds charged for the transportation of a carload of empty beer bottles from Capitan, N. Mex., to El Paso, Tex. Reparation is asked, and the petition contains a prayer that the Commission establish a lawful and reasonable carload rate and minimum for the future on the traffic in question from Capitan and points intermediate, to El Paso.

On August 3, 1908, complainant made a shipment of 76 barrels of empty beer bottles, weighing 10,000 pounds, from Capitan to El Paso, upon which charges of \$94 were collected at a rate of 94 cents per 100 pounds, which was the first class rate for a distance of 165 miles. Capitan is the terminus of the Capitan branch and is 21 miles from Carrizozo, a junction with the main line, which latter point is 144 miles from El Paso. The bottles were shipped in uncovered barrels.

Between the points mentioned the carload rate on iron, scrap, and junk, minimum weight 30,000 pounds, is 10 cents, which yields a revenue for the service involved of \$30 per car. Defendants' rate on lumber for the same distance is 21 cents, on wheat 22½ cents, and on hay and

on grain, except wheat, 18½ cents. Defendants assert that Capitan is located on a branch line and that the volume of traffic is light.

The revenue on junk at the established rate and minimum is 1.2 cents per ton per mile, while the revenue on the shipment in question is approximately 12 cents. Empty beer bottles are a low-grade commodity and are sometimes classed with junk. As above noted, the rate on junk between the points named is 10 cents, with a minimum weight of 30,000 pounds. A rate of 15 cents on empty beer bottles, with a minimum weight of 20,000 pounds, would yield a per-ton-per-mile revenue of 1.8 cents, or 6 mills higher than the earnings at the rate accorded to junk.

Upon the record in this case and upon the consideration of further matters within the knowledge of the Commission pertaining to like traffic, we are of opinion, and so find, that the rate of 94 cents per 100 pounds on carloads of empty beer bottles from Capitan and points intermediate to El Paso was, and is, unjust and unreasonable, to the extent that it exceeds 15 cents per 100 pounds assessed upon a minimum weight of 20,000 pounds, and an order will be entered establishing a rate for the future not exceeding that amount from Capitan and points intermediate to El Paso. Reparation on the basis above stated will be awarded complainant for the shipment involved in the sum of \$64, with interest from August 10, 1908.

20 I. C. C. Rep.

No. 3313.

DANVILLE BRICK COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted December 21, 1910. Decided February 24, 1911.

Rate of 9 cents per 100 pounds on paving brick, Danville, Ill., to Cedar Rapids, Iowa, not found unreasonable. Complaint dismissed.

Charles Conradis and W. E. McCornack for complainant.

C. A. Vilas and Edward M. Hyzer for Chicago and North Western Railway Company.

W. F. Dickinson and Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company.

A. P. Humburg and W. S. Horton for Illinois Central Railroad Company.

Glennon, Cary, Walker & Howe and O. E. Butterfield for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Chicago, Indiana & Southern Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged at Danville, Ill., in the manufacture and sale of brick and tile. The major portion of its product is paving brick. Its petition, filed June 6, 1910, alleges, in substance, that defendants' rate of 9 cents per 100 pounds for the transportation of paving brick, in carloads, from Danville, Ill., to Cedar Rapids, Iowa, was and is unreasonable, and asks reparation on basis of a rate of 7 cents in connection with certain shipments made between the points named during 1909.

Early in 1909 complainant was negotiating for the sale of a large quantity of paving brick to a firm of contractors in Cedar Rapids, Iowa, the brick to be used in paving the streets of that city. On April 20, 1909, complainant addressed to the assistant general freight agent of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company a letter reading as follows:

Please quote us best rate to Cedar Rapids, Iowa, and Newton, Ill.

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To which said agent made the following reply, under date of April 24, 1909:

Your request of the 20th. Rate on common building brick, Danville, Ill., to Cedar Rapids, Iowa, is \$1.40 per net ton.

Thereupon without further investigation respecting the rate applicable to the kind of brick it proposed to ship, complainant entered into a contract with Dearborn & Jackson, of Cedar Rapids, to sell that firm a quantity of brick sufficient to pave approximately 75,000 square yards of street surface and guaranteed, among other things, that the freight rate from Danville to Cedar Rapids, to be paid by the purchaser, should not exceed \$1.40 per ton, or 7 cents per 100 pounds. Under the contract 453 carloads of paving brick were shipped by complainant from Danville to Cedar Rapids during July, August, September, October, and November, 1909, over various routes formed by defendant lines, upon which the tariff rate of 9 cents per 100 pounds, or \$1.80 per ton was collected from the consignee. The freight charges in excess of the amount which would have accrued under the rate named in the contract of sale, \$5,896.62, were charged to and paid by complainant in accordance with its agreement. Following this transaction complainant filed its petition seeking reparation upon the theory that the rate charged was unreasonable to the extent that it exceeded 7 cents per 100 pounds.

Before considering the comparatively small amount of evidence bearing directly upon the reasonableness of the rate attacked, it will be convenient to dispose of the contention upon which complainant's counsel appears to place most reliance, as indicated by the petition and briefs. From March 23, 1905, until January 1, 1910, defendants maintained rates of 9 cents on paving brick and 7 cents on common building brick from Danville to Cedar Rapids. On November 28, 1909, defendants filed a tariff, effective January 1, 1910, which canceled the 7-cent rate on common building brick and left the 9-cent rate applicable to all grades of that commodity except bath and enameled brick. Counsel for complainant asserts that this action was taken in conformity with the decision in *Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co.*, 17 I. C. C. Rep., 197, decided November 26, 1909, in which the Commission expressed the opinion that there is no transportation reason for making different rates on different grades of fire, building, and paving brick, and that in adjusting their tariffs to the Commission's decision defendants wrongfully increased the rate on common building brick to 9 cents instead of decreasing the rate on paving brick to 7 cents. This assertion is negatived by the facts above stated, for it is absurd to assume that defendants could have filed on November 28 a trunk-line tariff prepared in conformity with a decision reached two days earlier

and not announced by the Commission until several days after the new tariff had been filed. Furthermore, the order in the *Metropolitan case* applied only to traffic from Central Freight Association territory to Trunk Line territory, and although the principle announced in that case is of general application it did not require the carriage of other grades of brick at the rates established for common building brick. In the *Metropolitan case* the Commission said:

In the consideration of these questions common building brick, so called, has no place. This grade of brick is produced from ordinary clay at kilns in practically every community, and moves on local rates for short distances only. There is little or no movement of common brick from any point in Central Freight Association territory to Trunk Line territory. It was agreed by all parties that any adjustment of the classification or of rates applicable thereto should not include common building brick.

Therefore it is unnecessary to consider the elaborate argument of counsel for complainant based upon the theory that the order in the *Metropolitan case* is controlling in this case.

Defendants' testimony is that the 7-cent rate on common building brick was established to permit the movement to Iowa points of a cheap grade of building brick produced at Chicago, and that it was through inadvertence extended to other points in Illinois by an "application sheet," which is the usual means of applying Chicago rates from points grouped with that city; and that common brick seldom moves as great a distance as that from Danville to Cedar Rapids. Complainant's testimony indicates that paving brick, which is worth about twice as much per thousand as common building brick, does not ordinarily move more than 250 miles from Danville.

The short-line distance from Danville to Cedar Rapids is 290 miles, over the Cleveland, Cincinnati, Chicago & St. Louis Railway and Chicago, Rock Island & Pacific Railway. Under the 9-cent rate the revenue per ton per mile over the short line is 6.2 mills. It does not appear that any of the traffic passed over the short-line route. Over the routes actually taken the revenue per ton per mile was as low in some instances as 4.5 mills. The average revenue per ton per mile of all the defendants upon all traffic for the year ended June 30, 1910, was 6.8 mills. The total freight charges paid upon the 453 carloads involved in this complaint were \$26,538.21, the average car loading 65,000 pounds and the average gross earnings \$58.58.

Complainant called attention to the fact that one or more of defendants participate in certain rates on paving brick from points in Illinois and Ohio to points in Wisconsin and Minnesota which produce less revenue per ton per mile than the rate here in question. An examination of the cases in which brick rates have been before the Commission discloses instances where rates producing ton-mile revenue both higher and lower than that resulting from the 9-cent rate have been approved. But the revenue per ton per mile under

any freight rate is in itself far from being conclusive evidence of the reasonableness of a particular rate. As was said in *Business Men's Asso. v. C., St. P., M. & O. Ry. Co.*, 2 I. C. C. Rep., 52:

The rule that the rate per ton per mile must be less for the greater distance is one of the tests by which the rates can be carefully scanned in themselves. It is, however, like looking at them with a microscope. It ignores all other tests except that which it alone furnishes. It ignores all surrounding circumstances and conditions and every factor of every kind and description that enters into the making of the rate, no matter how compulsory or imperious that factor may be.

Complainant testified that the cost of producing its paving brick was \$10.70 per 1,000 and the selling price of the brick in question \$14.50 per 1,000, f. o. b. Danville. There are factories in Danville which produce building brick, the value of the common brick being about \$5 per 1,000 and of facing brick about \$7 per 1,000.

In Official Classification territory brick is rated sixth class, and the sixth class rate, Chicago to New York, is 25 cents. The brick rate fixed by the Commission between those points in the *Metropolitan case, supra*, was 21 cents, or 84 per cent of the class rate which would be applicable in the absence of a commodity rate. In Western Classification brick are given class-E rates. The class-E rate, Danville to Cedar Rapids, is 11 cents, and the 9-cent commodity rate on brick is 81 per cent of that amount. That is to say, the commodity rate fixed by defendants in this case bears substantially the same relation to the class rate which would apply in the absence of a commodity rate as the commodity rate fixed by the Commission bears to the class rate in Official Classification territory.

Complainant has alleged in his petition that the 9-cent rate is unduly discriminatory, but no facts are of record which prove that allegation. In the sale of paving brick at Cedar Rapids the principal points with which complainant must compete are Brazil and Clinton, Ind., from which the rates are 10½ cents per 100 pounds; Crawfordsville, Terre Haute, and Veedersburg, Ind., from which the rate is 10½ cents per 100 pounds; and Galesburg, Ill., from which the rate is 6½ cents. The distance from the point last named to Cedar Rapids is 141 miles, and the resulting revenue per ton per mile 9.2 mills. The rates from Danville, therefore, seem to be fairly adjusted with respect to rates from competing points.

Upon the facts of record in this case, as well as our general knowledge of brick rates, we are not convinced that the 9-cent rate is or was unreasonable, and an order will be entered dismissing the complaint.

No. 3400.

**IN RE INVESTIGATION OF ADVANCES IN RATES BY
CARRIERS IN OFFICIAL CLASSIFICATION TERRI-
TORY.**

Submitted January 19, 1911. Decided February 22, 1911.

1. Carriers in Official Classification territory filed tariffs with this Commission naming increases upon all class rates and upon one-half of the commodity rates within that territory. The Commission, under provisions of the Mann-Elkins law, instituted proceedings of inquiry into the reasonableness of such increased rates, and, pending such investigation, the carriers voluntarily postponed the effective dates of the tariffs filed. After full hearing and investigation of the matter and upon all the facts and circumstances disclosed by the record; *Held*, That there is no evidence before the Commission which establishes the necessity for higher rates. The probability is that increased rates will not be necessary in the future. In view of the liberal returns received by these carriers in the past 10 years, they should be required to show, with reasonable certainty, the necessity before the increase is allowed. If actual results should demonstrate that the Commission's forecast of the future is wrong, there might be grounds for asking a further consideration of this subject.
2. The act to regulate commerce, as amended in regard to increased rates, should not receive exactly the same interpretation which has been put upon the English act in regard to advanced rates. The English act creates a presumption that the rates in effect on December 31, 1892, were reasonable rates, and the justice of any increase must be tried by that standard, whereas the act to regulate commerce as amended does not intend to enact that all rates in effect on January 1, 1910, are just and reasonable. Upon the contrary, it is open to any shipper or to this Commission to attack such a rate as unjust and unreasonable. The only effect of our statute is to cast, in certain cases, the burden of proof upon the carrier.
3. Before any general advance in rates can be permitted it must appear with reasonable certainty that carriers have exercised proper economy in the purchase of their supplies, in the payment of their wages, and in the general conduct of their business.
4. The Commission has been compelled to dispose of this case upon the evidence available, but there is no testimony tending to show the cost of reproducing these properties. It is plain that a physical valuation would introduce into the calculation a new element which might lead to a different conclusion. Congress ought to authorize a reproductive valuation of those railroads subject to Federal jurisdiction. The interest of the public ought not to depend upon a valuation made entirely by the owners of these properties, no matter how honestly the work may be prosecuted.

5. These class rates have been continuously in effect for the last 30 years, and less complaint with respect to the adjustment of rates has been received from this territory than from any other with which this Commission has to do. During this long period business has adjusted itself to this scheme of rates, and the Commission is not disposed, upon the mere suggestion that some better scheme might have been originally devised, to subvert the conditions which have become established.
6. Commodity rates stand somewhat different. An examination of the schedules shows that most of these commodity rates were carried under the classification when tariffs were first filed with this Commission, in 1887, and that the present commodity rates are from 10 to 25 per cent lower than the class rates then applicable. Carriers have frequent occasion to vary their commodity rates with varying conditions. While earnest objection has been made to the advance in class rates, in only three or four instances has the increase in commodity rates been especially attacked.
7. For these reasons the Commission dislikes to tie up, by hard and fast order, these commodity rates, and has concluded, as to all the rates involved in this proceeding, to simply require the defendants to cancel, on or before March 10, 1911, their advanced tariffs on file and to restore their former rates, which are the rates now in effect. If this requirement is not complied with the proposed rates will be suspended, the necessary findings of fact made, and the usual two-years' order issued as to all the tariffs involved.

Frank Lyon for the Interstate Commerce Commission.

Louis D. Brandeis for Traffic Committee of Commercial Associations of the Atlantic Seaboard.

Francis B. James for National Industrial Traffic League & Shippers' Association.

Thorne & White and *S. H. Cowan* for American National Live Stock Association and others.

C. D. Chamberlin and *F. W. Boltz* for National Petroleum Association and others.

Bryan, Christie & Small, and *P. W. Coyle* for Business Men's League of St. Louis.

William H. Wadhams for Independent Packers.

Haynie & Lust for Illinois Manufacturers' Association.

T. C. Spelling for Freight Payers' League of the United States.

John S. Dawson for Railroad Commission of Kansas.

Thorne & White for Corn Belt Meat Producers' Association and Cooperative Grain Dealers' Association.

Logan G. McPherson for Bureau of Railway Economics.

Walter L. Fisher for National Dry Goods Association, Association of Western Shoe Wholesalers, and others.

Francis I. Gowen for the carriers generally.

George F. Brownell and *H. A. Taylor* for Erie Railroad Company.

Hugh L. Bond, jr., *Irving Cross*, and *W. A. Parker* for Baltimore & Ohio Railroad Company.

George Stuart Patterson, Francis I. Gowen, Geo. V. Massey, and Alexander Minnis for the Pennsylvania Lines East of Pittsburg.

Clyde Brown and O. E. Butterfield for New York Central & Hudson River Railroad Company and others.

A. P. Burgwin for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

Clarence Brown and L. H. Alexander for Toledo, St. Louis & Western Railroad Company.

William S. Jenney for Delaware, Lackawanna & Western Railroad Company.

Walker D. Hines for Delaware & Hudson Company.

Joseph I. Doran for Norfolk & Western Railway Company.

Edward D. Robbins for New York, New Haven & Hartford Railroad Company.

Messrs. Clair, Burke, and Neill for Order of Railway Conductors, Brotherhood of Railway Trainmen, and Employees of the Baltimore & Ohio Railroad Company, and Baltimore & Ohio Southwestern Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The Official Classification applies in territory which is bounded, roughly speaking, by Canada upon the north, the Atlantic Ocean upon the east, the Ohio and Potomac rivers upon the south, and the Mississippi River upon the west. About one-fourth of the total single-track railroad mileage of the United States is embraced within this territory, but owing to greater density of traffic nearly one-half the total gross operating income accrues within these limits. This proceeding concerns a general advance in freight rates in Official Classification territory.

For several years past railroads have been insisting that, owing to the enhanced cost of operation, freight rates must be increased, and in the early summer of 1910 tariffs were filed naming such increases upon all class rates and upon about one-half of the commodity rates within the above territory. About the same time tariffs were filed advancing certain commodity rates in territory west of Chicago, and it was said that general advances would be made in all parts of the country. This led to much popular indignation. The Government was asked to interfere upon the ground that these advances were by agreement among the carriers in violation of the Sherman Antitrust Act, and did bring suit and obtain an injunction against the advance in western territory. It was given out that similar proceedings would be begun in Official Classification territory.

At the time these tariffs were filed Congress had under consideration certain amendments to the act to regulate commerce and an understanding was finally reached by which the carriers were to postpone the effective date of the tariffs which had been filed until such time as Congress should have completed its deliberations touching the amendment of the act and the Commission had been given opportunity to take such proceedings as it might be advised under the act as amended.

The amended act which took effect June 18, 1910, conferred upon the Commission jurisdiction to institute upon its own motion proceedings of inquiry into the reasonableness of rates, and further invested the Commission with authority to postpone, pending such investigation, the effective date of tariffs filed by the carriers. Acting under this provision the Commission, on July 13, 1910, instituted this proceeding of investigation into the reasonableness of the proposed advanced rates in Official Classification territory.

At the time of the institution of this proceeding the effective date of most of these tariffs was August 1, but carriers, acting upon the suggestion of the Commission, with a view to avoiding the great amount of labor involved in suspending all the tariffs in issue, voluntarily postponed the effective date of these advances until November 1, 1910, and it becoming evident as that date approached that the hearing could not be concluded within that limit, a further voluntary postponement was made until February 1, 1911. This case was heard with the *Western Rate Advance case*, No. 3500, 20 I. C. C. Rep., 307, and the two cases were not formally submitted until January 19, 1911. Since it was impossible to reach and promulgate a decision before February 1, carriers made an additional postponement to March 15, 1911.

This case and its companion case, No. 3500, have been presented to the Commission with much care and in great detail. The railways have been fully represented by counsel and have been heard in case of several of the most important railway systems through their presidents, in other cases through such witnesses as they desired to produce. Eminent counsel have appeared in behalf of the shippers and have, by the presentation of evidence and by oral statement, put before the Commission their view of this matter. The attorney of the Commission has also participated in the proceedings, and has prepared and presented for consideration a great mass of statistical information, mainly from the reports filed by the various interested carriers with this Commission.

From these sources a typewritten record of several thousand pages has accumulated, together with an almost innumerable number of exhibits. Extensive briefs have been filed; the cases were orally argued for eight days, and now stand for disposition.

As already said, class rates within the above territory are generally advanced. This is universally true of long-distance rates between the middle west and the Atlantic seaboard in both directions. It is also true of most of the shorter distance rates, the advances being such as to maintain the general relation which previously existed. Some of the companies have not, however, made corresponding advances in all their shorter distance rates, claiming that the former relation between such rates was erroneous and that the shorter distance rates should not be advanced, even though those for the longer distances are. About 150 commodity rates are increased, this being about one-half the total number of commodity rates prevailing within the territory.

These advances do not apply to most of the commodities which move in the largest volume. There is, for example, no advance in coal and coke, which constitute in case of the Pennsylvania Railroad nearly one-half its total tonnage, and which are large items in the tonnage of nearly all these defendants. Grain and grain products are not, for the most part, affected. No advance is made in the rates on pig iron, ore, brick, and, indeed, on most of the heavier and coarser articles. As a result the proportion of tonnage affected is much less than the proportion of revenue and the proportion of revenue is much smaller than the number of articles. It is estimated that the advances affect about 15 per cent of the total tonnage of this territory and about 30 per cent of the total freight revenues, but if reference be had to the articles affected, it will be found that almost everything, with the exception of a few of the heavier and coarser articles, is by this advance subjected to an increased transportation charge. It may be properly said, therefore, that these proposed tariffs work a general advance in freight rates within the limits to which they apply, and such was the professed intention of the carriers in filing them.

These advances are justified by the defendants upon the ground that the cost of operation has so increased that although gross operating income has continued to grow the net operating income has become and is insufficient. Some claim was put forward by certain carriers that certain of these advances were justifiable upon grounds other than the need of additional revenue, but this is not much insisted upon. The justification presented by the carriers is the want of additional revenue, and the question presented to us is, Are these defendants justified in laying this additional transportation burden upon the public for the purpose of obtaining greater net revenue?

Strictly speaking, this Commission has no jurisdiction to hear and determine that question. We have no authority, as such, to say what amount these carriers shall earn, nor to establish a schedule

of rates which will permit them to earn that amount. Our authority is limited to inquiring into the reasonableness of a particular rate or rates and establishing that rate or practice which is found lawful, in place of the one condemned as unlawful.

The reasonableness of a railroad rate may be presented in several aspects. Assuming that the rates of a railroad are to be so adjusted as to allow it a fair return upon the value of its property devoted to the public service the first inquiry should be, What amount is this railroad entitled to earn? When that amount has been fixed there arises the further inquiry, From what source shall this revenue be derived? A railroad is ordinarily a carrier of both freight and passengers and of many kinds of freight. Now, how much net return ought its passenger business to yield and how much should be contributed by each kind of freight? This problem is greatly complicated by the further consideration that certain kinds of traffic will not move at all unless a certain rate is accorded, while the movement of other kinds of traffic is but little affected by the amount of the transportation charge.

The railroad rates of this country have not been constructed as a rule upon any scientific basis, and this is especially true of the interstate rates. The traffic officials who have established these rates have generally done so without any special inquiry as to the total amount of revenue which ought to be produced or as to the part of that burden which a particular commodity ought to bear. This Commission is called upon to deal with rates as they exist, and in so doing we ordinarily consider them, not from the revenue standpoint, but rather from the commercial and traffic standpoint. At the same time it is now the settled law that there is a limit below which the revenue of railways can not be reduced by public authority, and if there were no such constitutional limitation it would nevertheless behoove every regulating body to permit the existence of such rates, when possible, as will yield just earnings to the railways. The question of revenue is therefore fundamental and ever-present in all considerations as to the reasonableness of railroad rates, although it may not be and seldom is, where single rates are presented, the controlling question.

While the authority of this Commission only extends to the passing upon the reasonableness of the rate presented for its consideration, it is not confined to single rates. Any number of rates may be embraced in the same complaint, and the duty of the Commission is to consider and pass upon all those so presented. When, as here, there is involved the propriety of advances which affect the entire rate fabric within this territory, embracing one-half the tonnage and one-half the freight revenues of this whole country, and when that advance is justified mainly upon the ground, not of commercial con-

ditions, but by lack of adequate revenue upon the present rate basis, this Commission must determine the fundamental question.

It might not follow, even though we were of the opinion that these carriers were entitled to additional revenue, that they ought to obtain it from an advance of these particular rates. We might be of the opinion that only a portion of these advances should have been made or that other articles altogether should have been selected. It might be true that even though there were no need of additional revenue some or all of these rates could be properly advanced, but as this case is presented and as preliminary to the consideration of these further questions we must dispose of the basic question: Are these defendants justified at this time in demanding additional revenues from the public for the services which they are rendering?

Before attempting to state the basis upon which that question is to be answered, certain preliminary observations touching the considerations by which this Commission is to be guided in its disposition of this matter seem appropriate.

Since the beginning of this proceeding great numbers of letters and petitions have been presented from individuals, organizations, and committees representing various interests, some urging that these advances be sanctioned, and others protesting against them. It seems to be the popular impression that this is in some sense a political question, which may properly be disposed of in accordance with the wishes of the majority.

The railroad freight rate affects all classes of society, but in different ways. The investor in railroad securities desires that the rate be liberal in order that the integrity of his security may be protected. The railroad employee believes that the rate should be advanced, since if his employer has ample earnings he can obtain a larger share for himself in the way of increased wages. The railroad supply house approves the advance because higher rates insure better business for it.

Upon the other hand, the manufacturer insists that higher rates mean to him a higher cost of production and less profit in the operation of his factory. The merchant urges that to increase the transportation charge is to increase the cost of his commodity and to limit the amount of his sales.

It should be noted moreover in this connection that those who are most affected by these advances are usually not represented at all in such discussions. While it is true that the increased rate adds to the cost of production and while at the outset this increased cost must perhaps be borne by the manufacturer or wholesaler, still in the end the freight rate, like every other item of expense, finds its way into the price paid by the consumer. The freight rate may limit the

operations of a particular factory, or may exclude the jobber from a particular market, but the ultimate producer and consumer for the most part bear this burden.

It was objected in the course of these hearings that the interest of the general public in the proposed advances was but slight, since the additional transportation charge as applied to a single article would be practically negligible, but the deduction sought to be made from this fact can not be allowed. Whatever is added to the net revenues of these defendants must be paid by someone. An increase of 1 cent per ton in the rate of transportation would hardly be perceptible in case of any commodity, and yet 1 cent per ton upon the total tonnage of the railroads of the United States, as shown by the returns to this Commission for the year 1909 would amount to \$8,264,927, which forcibly illustrates the necessity of scrutinizing every advance, no matter how slight.

This Commission must stand for the entire public, including the railways. It can not accede to the mere wish of any class; it must recognize the just demands of all classes; and it must have in mind those who do not appear as well as those who are represented before it.

A somewhat different question is presented by those who urge that to permit these advances in freight rates would immediately stimulate all kinds of business. The assumption appears to be that business conditions are unsatisfactory, and that some special effort is necessary to restore satisfactory conditions.

Next to agriculture our railroads are the greatest single industry. In their ordinary maintenance and operation great numbers of laborers and vast quantities of supplies are used. Railroad extension would mean the employment of additional laborers and the purchase of additional material and equipment. Now, the thought seems to be that to permit these advances would induce larger expenditures in the maintenance of our present roads, and would lead to extensions and improvements which would in turn employ additional labor, put into circulation additional money, and thereby improve general business conditions.

So far as such expenditures are legitimate, they ought to be encouraged. Our railroads should be kept in a high state of efficiency, and railroad charges should be sufficient to permit this. Necessary extensions and improvements should be made, and the treatment of our railroads by the public should be such as will inspire that confidence in the investing public necessary to obtain the funds for such additions. But to the extent that an artificial impetus might be given to railroad building and kindred industries, the effect would be in the end baneful, even though the temporary result might seem beneficial.

It appeared upon this hearing that the freight tonnage of 1907 was larger than ever before, that this led to an unprecedented demand

for railway equipment and railway supplies, and that factories were then provided to meet this demand, which can not now be fully utilized. It was admitted by the representatives of supply houses that the productive capacity for railway equipment and supplies much exceeded that required for the ordinary upkeep of our railways, and that these facilities could only be utilized to their full and most profitable extent in case additional railroads were constructed and additional equipment required. We ought not to impose upon the public rates, otherwise unreasonable, for the mere purpose of temporarily providing business for these factories, even though the effect might be to stimulate, for the time being, other kinds of industry.

Just and reasonable rates should be allowed, but we should not be justified in permanently imposing rates unduly high in order that business conditions might be temporarily improved.

We are told that this increase in rates is necessary to maintain the credit of our railroads, and this claim has been made by high authority and with much insistence. It is said that our railroads owe at the present time large sums which are being carried upon short-time paper and which should be converted into funded indebtedness; that other large sums must be had in the immediate future for necessary extensions and improvements; that the money for these purposes should come largely from foreign investors, since the rate of interest in England and upon the Continent is lower than with us, but that, at the present time, there is, owing to the treatment of our railroads by the nation and by the various states, a feeling of distrust which has impaired the selling qualities of their securities, and which should be removed by a decision of this case in their favor.

It may be admitted that it is for the interest of the general public, as well as the railroads, that their funded debt should bear as low a rate of interest as possible. A very considerable part of the saving to railway companies in recent years has come from a reduction in the rate of interest paid. In 1895 the average rate paid by all the railroads of this country was 4.69 per cent; in 1909 this figure had been reduced to 3.90 per cent, and the saving computed upon the indebtedness of 1909 represented by this decrease in the rate of interest would have amounted to \$77,000,000. Interest upon its funded debt is a fixed charge in the nature of an operating expense, and in proportion as this charge can be reduced benefit should accrue both to the railway company and its patrons. It must be conceded, therefore, that railway rates and the treatment of our railways should be such as will make the long-time railway bond, which bears a proper relation to the value of the security, a favorite with the investing public.

This record does not indicate that railway credit has been impaired. It does appear that it is impossible to sell a 4-per-cent bond at the

same price to-day which the same bond would have brought 10 years ago; but this by no means shows that the reason for the reduced price is want of confidence in the security. This record makes it plain that a municipal bond, into the value of which the quality of the security does not enter, sells in the year 1910 for a materially lower price than the same bond brought in 1900. Comparisons which have been introduced between the selling price of railroad bonds and municipal bonds would seem to demonstrate that the price of the railroad bond is better to-day, as measured by the price of the municipal bond, than it was 10 years ago, and this would indicate that in the last decade the credit of our railways had gained, not lost.

The general rate of interest has advanced and the price of a bond bearing a given rate has therefore declined. This by no means indicates an impairment of railway credit. There is no reason to suppose that railroad bonds bearing a proper rate of interest might not readily be disposed of to-day; whether it would be wise for our railways to sell long-time bonds at the present rate of interest, is a question of financing upon which we are not required to express an opinion.

As to conditions abroad no reliable information is before us. Whatever unfavorable impression prevails is due largely to the activities of the railroads themselves. Never before have the net earnings of the railroads of the United States equaled those for the year 1910, estimated on any basis. Never before has the gross amount paid in dividends been as large, nor the average dividend rate as high, as in the year 1910; and yet in the face of this unparalleled prosperity the press both at home and abroad has been filled, through railroad influences, with dire forebodings of coming disaster. If the credit of American railways is still sound either here or in foreign money markets it is not because of but in spite of the declarations of railroad operators.

While we have no knowledge, as already suggested, of conditions abroad, we have an impression that the trouble with American railway securities in foreign countries has been in the past, and may be to-day, not too much Government regulation but rather the want of it. Practices like those which have disgusted the foreign investor with American railway stocks and bonds in many instances would have been impossible under proper governmental supervision. When the foreign investor understands that no dollar of stock or of bonds can be issued without the sanction of the Government and that every dollar of the proceeds from the sale of stocks and bonds must be invested in the property against which his security stands, his confidence in the American railway list will be increased rather than diminished.

But, however all this may be, a fundamental economic fallacy underlies the proposition that we should permit rates otherwise unreasonable for the purpose of bolstering up the credit of our railways. It would be much better for the Government to guarantee these bonds than to permit the people and the industries of this country to bear the burden of unreasonable transportation charges.

We come now to a consideration of the facts upon which the carriers rest their justification for these advances, and here, at the outset, arises the inquiry as to just what effect is to be given to the amendment of June 18, 1910, providing that—

At any hearing involving a rate increased after January 1, 1910, or of a rate sought to be increased after the passage of this act the burden to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier.

The carriers in this proceeding seek to justify the proposed advances by showing an increase in cost of operation due to certain increases in the wages of their employees. The item of labor makes up nearly one-half the total cost of the operation of a railroad. In the spring of 1910, consequent upon the demands of various labor organizations, wages were generally advanced in Official Classification territory. These advances were not uniform among all classes of labor, nor upon all lines, but they aggregated from 5 to 8 per cent of the pay rolls of most of the railroads involved and were therefore very substantial in amount.

There are 41 principal operating companies in the territory involved which have been made defendants to this proceeding. Each of these companies has shown the amount by which its operating cost for the year 1909 would have been increased had the higher scale of wages been in force during that year, and has also shown what the increase in freight revenue would have been had the advanced rates been in force during the same period. While the method employed is open to criticism, the results are sufficiently accurate for the purpose in view. These figures show that, taking the 41 railroads together, the increases in wages for the year 1909 would have amounted to nearly \$35,000,000, while the additional revenue from the proposed advances would only have been \$27,000,000.

The defendants, or some of them, insist that this showing fully sustains the burden cast upon them by the statute above referred to. They do not, perhaps, insist that the Commission should find, in terms, that the proposed advanced rates are just and reasonable, but they do insist that upon that showing and without further inquiry we ought to either dismiss or stay the present proceeding, which is upon our own initiative, and suffer the advanced rates to take effect. Individual rates might be attacked by individual shippers, but the

proposition that a general advance might be made has been established.

Some suggestion is made that the interpretation which the English courts have put upon a somewhat similar act of Parliament, passed in 1894, gives countenance to this assumption. A brief reference to that act and to the decisions under it may be appropriate.

The English Parliament has always fixed the maximum rates to be charged by the various railroads under its jurisdiction, but, in point of fact, the actual rates have very seldom equaled these maxima. Under these circumstances the English courts uniformly held that any rate less than the maximum prescribed by Parliament was conclusively presumed to be reasonable.

About 1892 Parliament revised the maximum rates and also the classifications, and in so doing prescribed in many cases maximum rates lower than those formerly in effect, and so low as to require a reduction in some instances of the rates actually charged. Thereupon all the railways, on January 1, 1893, advanced their rates up to the legislative maximum in nearly all cases.

The effect of this was to arouse a storm of indignation from the shippers, which resulted in a parliamentary inquiry and in the act of 1894, providing that where a railway rate had been advanced subsequent to December 31, 1892, it should lie with the company making the advance to justify the "increase of the rate."

Under this statute the English courts have uniformly held that railways can only justify an increase by showing increased cost in the handling of the business. They may show that this increase in cost had taken place previous to December 31, 1892, or subsequent to that date, but they must show that there has been an actual increase in the expenses of handling the business and that increase must be confined to the particular traffic to which the advance applied. It was not enough, where the question was upon an advance in the coal rate, to show that the total cost of operation had increased or that total net revenues had decreased; it must appear that the cost of handling coal or, as termed in the decision, "mineral traffic," was greater by a sufficient amount to justify the advance.

Upon the assumption that the same interpretation should be given our statute as has been put upon this act of Parliament, the defendants have not, by the evidence above referred to, established their justification. They have shown, to be sure, a greater advance in the cost of operation than the amount derived from the increase in these rates, but that increase in operating expenses applies to all kinds of traffic, while these advances apply only to particular traffic. There is nothing which even tends to show what part of this \$35,000,000 is applied to passenger service and what part to freight

service, nor as between the different kinds of freight is there anything which indicates the apportionment of this item of increase. But these advances apply to only 15 per cent of the tonnage and 30 per cent of the revenue of these 41 railroads.

Nor should our statute receive exactly the same interpretation which has been put upon the English act. That act provides that the carrier shall justify the "increase of the rate." Our act provides that the burden of proof shall be upon the carrier to show that the "increased rate" is just and reasonable. The English act creates a presumption that the rates in effect on December 31, 1892, were reasonable rates, and the justice of any increase must be tried by that standard. Our act does not intend to enact that all rates in effect on January 1, 1910, are just and reasonable. Upon the contrary, it is open to any shipper or to this Commission to attack such a rate as unjust and unreasonable. The only effect of our statute is to cast, in certain cases, the burden of proof upon the carrier.

The Supreme Court of the United States had held in *Interstate Commerce Commission v. Chicago Great Western Ry.*, 209 U. S., 108, that although a rate had been advanced the presumption of lawfulness still attached to the advanced rate. This Commission had said that where a complainant attacked the rate of a carrier it was incumbent upon him to introduce some testimony tending to show the unlawfulness of the rate attacked. *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, 12 I. C. C. Rep., 427. The air was filled with rumors of advances in freight rates. Congress did not intend to say that all rates in effect on January 1, 1910, were reasonable, nor that these rates might not be reduced by the Commission or advanced by the railroads; but it did say that if a railway advanced its rates the burden of proof should rest with it and not with the shipper who might attack the advanced rate.

The question before the Commission is still the same and is upon the reasonableness of the rate in effect if the advance has taken place or upon the proposed advanced rate if the tariff has been suspended. The order of the Commission is precisely the same as before. If, in our opinion, the rate is unreasonable, we must find what would be a reasonable rate and order the observance of that rate. The character of the evidence and the considerations upon which we proceed have been in no respect changed.

So reading this amendment, it seems apparent that the carriers have not, by showing that the increases in wages more than equal the increases in rates, made out the reasonableness of the proposed advanced rates; and nothing could more plainly show this than the figures which have been presented to us with respect to the net earnings of these same 41 carriers. It appears that during the year ending June 30, 1910, the net earnings of these railroads aggregated

\$51,000,000 more than during the year 1909. If, therefore, the entire advances in wages had been in effect during the whole year of 1910, instead of during a few months in the spring of that year, the net earnings for 1910 would have exceeded the net earnings for 1909 by \$16,000,000. This is not conclusive against the propriety of these advances, for the earnings of 1909 may have been too small or the causes which contributed to the greater net earnings of 1910 may not be permanent in effect; but it does show that we can not conclusively presume from an increase in operating expense that there should be a corresponding increase in transportation charge. It is the net, not the gross, which we must consider.

This evidence is important; it strongly tends to support the contention of the carriers; it is not conclusive; we must still examine the entire record which has been put before us for the purpose of determining whether these proposed advanced rates are, under all the circumstances, just and reasonable, and, as we have already seen, this, as the question is here presented, involves, of necessity, the fundamental question, Will the net earnings of these defendants, notwithstanding these increases in wages, be sufficient without an increase in their rates of transportation?

The question, then, is, To what net earnings are these carriers properly entitled? The courts have often said that a public-service corporation is entitled to a fair return upon the value of its property being devoted to the public service. While this language has been used in connection with proceedings to determine the point below which the revenues of public-service corporations may not be forced by legislative action, it states a rule of general application. Both the value of the property and what is a fair return upon that value must be considered.

Some states have authorized and even instructed their railway commissions to put a value upon the property of railways operating within their borders. In some instances the elements to be considered in determining that value have been prescribed by statute, and the effect of the valuation when made is indicated. This Commission has no such authority. We can not in this case fix in terms the value of any one of these railroads, nor would that value, if determined in this case, be binding in subsequent proceedings; but, manifestly, in order to decide the issue presented we must have a general notion of the value of the properties of these defendants and must form an idea of the elements which should properly enter into the determination of that value.

Here we have the benefit of the judgment of the Supreme Court of the United States. In *Smyth v. Ames*, 169 U. S., 466, that court had before it a statute of the state of Nebraska fixing certain maximum freight rates to be observed within the limits of that state, the ques-

tion being whether those rates were so low as to be in violation of the fourteenth amendment. In disposing of the case the court elaborately considered, both generally and as applied to the facts of that particular record, the relation of value to a reasonable rate, announcing its conclusion in a paragraph found on page 545. The law as there stated has never been qualified, and the paragraph, while often quoted, may be repeated here:

We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stocks, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property.

While the court enumerates the factors which should be considered in the determining of the value of the property no attempt is made to assign any definite value to these different factors, and counsel who have argued this case both for and against the advances are hopelessly divided upon this point. It is earnestly insisted by some that the only test or value is the cost of reproduction and that all other elements should, as a practical matter, be disregarded. Other counsel urge, with equal earnestness, that the money actually invested in the property affords the only just basis upon which to compute the reasonableness of the return, while still others argue that this Commission should prescribe reasonable rates and that the various railroads should be allowed to earn what they can under those rates. It would not be profitable to here attempt any discussion of the questions raised, but we may point out the extent to which the present record contains information upon each of the various elements of value embraced in the above enumeration by the court.

The first two elements—original cost of construction and permanent improvements—may be considered together.

Carriers are now required to state in their statistical returns to the Commission the cost of their properties. If this account were correctly kept it would show the money expended from the first in building and equipping the railroad.

In point of fact, this item is not reliable. The present railroad systems in Official Classification territory have usually been formed by the combination of a large number of smaller railroads, which were built as independent properties. The Baltimore & Ohio

system, for example, embraces more than 100 such properties. The only information which the present system has of the original cost of construction is that derived from the books of the various companies which have been absorbed. These books were seldom accurately kept and often represent as money what was, in fact, something else. The beginnings of this account, therefore, are very imperfect and unreliable.

Since 1888 carriers have been required to make statistical returns to this Commission, showing, among other things, the amounts invested from year to year in their properties and since that date it is possible to determine with substantial accuracy the cost of the improvements made.

It is also generally possible to determine by an analysis of the reports to what extent these improvements have been made from the earnings of the road and to what extent the money which has gone into them has come from new capital, either stock or bonds. It was, however, the custom of many companies previous to 1907 to charge as a part of their operating expenses improvements to the roadway and equipment, and this introduces an element of uncertainty into the above item, even in recent years.

It is sometimes possible, by reference to other financial publications and to their own reports to stockholders, to trace the history of these properties for many years previous to the enactment of the act to regulate commerce. On the whole, it may be said that we know something of the actual cost of building and equipping the railroads in Official Classification territory, the extent of that information varying largely with different railroads.

If from the item "cost of construction" could be subtracted the amount entering into that item which has come from the operation of the property itself, we should have the investment in the property; that is, the amount of money which has been actually contributed to the building and maintaining of the railroad, and we were strongly urged by certain counsel representing the shippers to adopt this as the most reliable and practically the sole test in determining the amount upon which a return was to be allowed.

Were it possible to determine the exact amount of money which has been put into these properties, the amount of return which has been paid up to the present time, the degree of prudence with which the property has been constructed and operated, certainly the investment would furnish a very satisfactory basis for arriving at an equitable return. But these facts never can be determined with accuracy. We can not know even the actual amount of money which has gone into these enterprises from outside sources, nor the return which has been paid upon it, nor whether reasonable diligence was

exercised in the investment or in subsequent management. Disaster may have come upon it, for which the public ought not to stand accountable. This factor must be more or less controlling, according to the circumstances of each individual case.

The third factor named by the Supreme Court is the amount and market value of the stocks and bonds. This information can be obtained with great accuracy, covering both the present and a considerable number of years, but no counsel in argument has attached any importance to the information when obtained. In this feeling we do not altogether share. It seems to us that the price at which these stocks and bonds sell may be a matter of some significance in determining the amount which the railroad should be allowed to earn.

We are not fixing the value of a collection of ties and rock and steel rails, but of a railroad equipped and doing business. What is that railroad worth as a railroad for the transaction of a railroad business?

Most of the great systems in Official Classification territory have existed in substantially their present form for the past 25 years. While there is to-day no competition worth the name in the railway rate, and while there never will again be such competition, this has not been true of the past. Originally there was the most active competition in the rate of transportation by rail, and these tariffs, especially in Official Classification territory, are largely the product of that competition. There is a strong presumption that rates so arrived at are reasonable rates. Now, the market value of the stocks and bonds of each of these carriers represents the sum which that property will bring in the open market. That is the value which has been worked out in the actual operations of recent years in competition with its rivals, and is at least a strong index of the value of that property in comparison with other properties in this territory. It is the only way in which the value of these properties can be determined by the test of bargain and sale.

The market value depends largely upon the rate which has been charged, and to assume that the market value is a fair index of value for rate-making purposes is to assume that the rates charged have been, in the main, reasonable. In a degree this presumption does arise with respect to these rates under consideration. This is not the case of a gas plant or a water plant, which has no competitor in the service of its particular community, and whose rates have not in fact been established by legislative action. Actual competition has played an important part in working out these transportation charges in Official Classification territory, although in many instances the effect of such competition has been overcome.

There is another aspect in which this stock and bond factor is important. The Government has invited private capital to invest

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in the construction and operation of these public utilities. While it might have established the rate, it has left that to competitive forces. The public has for many years known the results of the operations of these defendants, and their securities have thereby acquired certain values upon the market. At these values enormous private investments have been made. We were told upon the hearing of the extent to which savings banks and insurance companies held the securities, especially the bonds, of these railways. We know that private investors have bought, not for speculative purposes, but as a legitimate and permanent investment, large amounts of the stocks of many of these companies.

Now, this Government having permitted this to be done can not close its eyes to the fact that it has been done. We can not be oblivious to the effect of our action upon the value of these investments, which have been made in good faith. In this view the market value of these stocks and bonds for the last 10 years certainly, and the effect which our action may have upon their market value for the future, must be considered. We can not, of course, allow such rates as will in all cases guarantee or perpetuate the prices at which these stocks have been bought, but in viewing the entire situation we should have that price in mind.

The next item named by the Supreme Court is the present cost of reproduction. This is undoubtedly a factor of great importance in determining the value of the railroads of this country, upon which earnings may be legitimately demanded. The courts have repeatedly recognized this in their decisions touching the rates of public-service corporations. Many states have authorized a physical valuation of their railroads in this view. This Commission has several times urged Congress to take steps looking to such a valuation, but up to the present time this has not been done.

It was insisted upon the argument that this was the only test of value entitled to serious consideration, and we were urged to postpone our determination of these questions until such valuation could be made. In view of the fact that the Supreme Court has not yet apparently held that the present cost of reproduction furnishes the only measure of value, and especially in view of the refusal of Congress to act upon the suggestion of this Commission by taking steps to procure such valuation, it would seem to be our duty to proceed with the disposition of this case as best we can upon the present record. While there is, with respect to a few of these properties, some suggestion in testimony as to reproduction cost, there is no evidence upon that point in No. 3400 which merits serious consideration, and since we are entirely without such information it is useless to discuss the many delicate and important questions which might be presented if a reliable physical valuation were before us.

The last item is "the probable earning capacity of the property under particular rates prescribed by statute and the sum required to meet operating expenses," which means, information necessary to determine the net revenues which will accrue from the application of particular rates.

This information the Commission has. The statistical returns required from carriers under the act show in great detail the gross income of these carriers, both from operation and from other sources, together with their expenses of operation and their various fixed charges. From an analysis of these reports it is possible to determine with substantial accuracy the amounts which these defendants have received in recent years and what has been done with those amounts. While it is not possible to compare the present with former years in case of some of these systems since additional lines have been taken on, and the figures do not therefore cover the same mileage, still it is possible to determine with considerable certainty the history of operating expenses and of net results to these carriers under the rates which have existed in the past, and to form an opinion, although not an exact one, with respect to results for the future under the rates in effect and under the proposed advanced rates.

The foregoing are the factors which, in the opinion of the Supreme Court, are to be weighed in determining the value of these properties for rate-making purposes. When it is remembered that information upon one and perhaps the most important of these heads is entirely lacking, that the Supreme Court itself has not attempted to assign a particular value to any one of the above factors, which must be combined to produce the result, that counsel after the most careful consideration, both of the law and of the economic and social problems which underlie this subject, are hopelessly divided as to the relative importance of these respective items, it will be seen that anything like a mathematical conclusion, or one for which a definite reason can be assigned, is impossible. Further reflection confirms what this Commission, having under advisement a similar question, said *In re Proposed Advances in Freight Rates*, 9 I. C. C. Rep., 382, 404:

It is plain that until there be fixed, either by legislative enactment or judicial interpretation, some definite basis for the valuation of railroad property and some limit up to which that property shall be allowed to earn upon that valuation, there can be no exact determination of these questions. In the absence of such a standard the tribunal, whether court or commission, which is called upon to consider this matter, can only rely upon the exercise of its best judgment.

We must take the history of these properties and, from a consideration of all the facts before us, arrive at some rough notion of their value for railroad purposes. As a part of that same inquiry

we must form some idea of the rate of return to which the property of these carriers is entitled.

Here, again, it should be observed that this Commission has no jurisdiction to deal with that question as such. We have no authority to say that a railroad ought to earn, either as a matter of right or as a matter of public policy, any given per cent upon its value; but in discharging our duty, to say whether these particular rates which the carriers propose to establish are just and reasonable, we must determine in a general way what a fair return would be, and that matter will be next considered.

It now is and long has been the settled doctrine of our courts that the railway is a public highway. The fair inference from those decisions is that the Government may, through the states or the Nation, if the Federal Constitution be broad enough, construct and operate these public utilities, or it may delegate that duty to private individuals. In case the railroad is operated by private capital, the Government may prescribe the rules under which the public service shall be discharged and the rates which shall be charged for that service, subject to the constitutional limitation that the private property shall not be deprived of a due return.

Outside the United States a majority of railroad mileage is to-day owned and operated by the different governments. It has been our policy from the first to delegate this duty to private individuals, and in this way a vast amount of private capital has been induced to invest in railroad construction and operation.

Now, the ordinary considerations of justice require that the money so invested by invitation of the Government should be allowed a fair return. This does not mean that we should permit rates which will guarantee all railroad investment, nor which will guarantee any railroad investment at all times, but we should allow rates which will yield to this capital as large a return as it could have obtained from other investment of the same grade. If rates formerly in effect have become insufficient, then higher rates should be permitted.

Our railroads must be maintained in a state of high efficiency. This the public interest demands. Commerce and industry can not afford to wait on transportation facilities. Our rates should be such as to render possible a high-class, not an extravagant, service.

It was said during the course of these hearings that our present railroad facilities were not sufficient to handle the business now offered, and that in the interest of economy, even though business did not increase, considerable expenditures should be made. However that may be, it is reasonably certain that business will increase. For the 14 years, 1896-1909, the tonnage handled by our railroads increased 106½ per cent. It is hardly probable that the next 14 years

will witness a corresponding progress, but unless our national development has stopped, the business of our railroads must continue to grow. This will require additional facilities of all kinds. It is generally conceded that within the next few years, if our means of transportation by rail are to keep pace with the calls upon them, very large sums must be expended in the way of new construction and new equipment. While some small portion of this may come from current earnings, the great bulk must be new capital, and this capital must be obtained from the investing public. If, therefore, we are to rely in the future, as we have in the past, upon private enterprise and private capital for our railway transportation, the return must be such as will induce the investment. It is therefore not only a matter of justice, but in the truest public interest that an adequate return should be allowed upon railway capital.

At the same time the railway rate is, in the final analysis, a tax laid upon nearly every species of property and upon almost every sort of activity, and there is no reason why all other kinds of property should be required to pay to this particular species of property an undue compensation.

These statements are truisms; the real inquiry is, How much? Upon what considerations can we determine the figure which is necessary to do justice between the private capital operating our railways and the public using those railways?

Capital will seek on the average that investment which is the most satisfactory. To divert private capital to railway enterprise it is only necessary to offer an investment which is more attractive or equally attractive with other forms of investment contemporaneously presented.

The rate at which money can be obtained depends upon the certainty with which principal and interest are likely to be paid, and freedom from individual responsibility in making and caring for the investment. A high-grade municipal bond, where the element of risk is eliminated and where the only ability required from the investor is the capacity to cut off a coupon or indorse an interest check, sells at an extremely low rate of interest. Now, in both these respects the railroad investment is attractive.

While talent of the highest order is required to finance and operate these great enterprises, and while very large salaries are paid to the individuals who perform these duties, still those salaries are all a part of operating expenses and are paid for by the property itself before the net return is computed. No ability is required upon the part of the investor.

The element of risk is less here than in most industrial operations. In private enterprise there is continual danger of competition. No

matter how well established the business, nor how profitable the present return, there is always the hazard that some other article may take the place of the one produced, or that some other factory may produce the same article at a less price. This possible competition imperils the existence of the investment itself as well as the annual return.

No such consideration enters into the business of the railroad, certainly not of these railroads before us. The main lines of railroad in Official Classification territory have been constructed, and there is but little danger to be apprehended from the construction of new lines. There must be extensions and additions, but these will be along and in connection with the present trunk avenues.

It is certain that the present business of our great railroad systems must continue and even increase. Unless our entire social structure is to be revised, unless our industrial and commercial processes are to be radically changed, it seems certain that the traffic of our railroads must not only continue but grow. To this there will of course be local exceptions, but broadly considered, the statement is true.

There is but little competition in the price at which the commodity produced by these railroads, viz, transportation, is sold; that is, in the rate. This was not always so. In the past the most violent competition in railway rates has prevailed, and this competition has often gone to the point of imperiling the financial integrity of great railroad systems; but all that is a thing of the past. The law itself practically forbids it, and if it were permitted by law it is inconceivable that the practices of former years would recur.

These carriers find no difficulty to-day in advancing their rates, as the present proceeding abundantly testifies, and the Constitution of the United States protects them against an unreasonable reduction of the rates which they establish.

What business can be more attractive to the investor than this, in which no rival is to be apprehended, where the amount of business is assured, and where the price for the transaction of that business is protected by the fundamental law of the land.

All this has long since reflected itself in the prices of railway securities. Ten years ago a high-grade, long-time railroad bond like the $3\frac{1}{2}$ per cent New York Central underlying mortgage sold at par. To-day, owing apparently to the increase in the rate of interest a similar bond, in order to bring par, must bear a rate of 4 per cent, or perhaps slightly more. These railroad bonds command nearly as high a price when no question of local taxation intervenes as do municipal bonds.

The price of railroad stocks in the past has not been controlled by the same considerations as that of railroad bonds. These stocks have

been largely the subject of speculation and the prices have been determined by other considerations than the mere rate of dividend. These conditions are changing. In Official Classification territory the day of railroad construction and railroad consolidation has given place to that of railroad operation. The successful railroad magnate of the future in this territory will be he who can operate his properties most economically and most satisfactorily.

Under the conditions of the future, railroad stocks, or at least the stocks of these railroads before us, are bound to lose much of their speculative character and to assume more the character of an investment. To-day a 5 per cent noncumulative preferred stock sells for slightly more or slightly less than par, according to conditions. At its present market value the 4 per cent preferred stock of the Baltimore & Ohio yields a return of about $4\frac{1}{2}$ per cent. It seems probable that any railroad stock which was certain to pay a dividend of 5 per cent year after year would sell readily at par.

It is contended by the defendants, and this is one of the most important questions before us, that rates should be sufficient to enable them not only to pay their current operating expenses, their fixed charges, a reasonable dividend, and to maintain their properties at the present state of efficiency, but also to make improvements and additions to those properties of a permanent character. Those who oppose an increase in these rates answer that improvements of this character which add to the permanent value of the property ought not to be paid from the current returns of the railroad, but should rather be made out of new capital, and they point to the previous decisions of this Commission and to the approval of those decisions by the Supreme Court of the United States as confirming that position.

In *Central Yellow Pine Asso. v. I. C. R. R. Co.*, 10 I. C. C. Rep., 505, this Commission had before it an advance in the rate on yellow-pine lumber from points of production in the south to the Ohio River. This advance was justified by the carriers upon the plea that owing to increased cost of operation their net returns were insufficient. In examining this matter the Commission found that the carriers had charged as a part of their operating expenses large sums, which had, in fact, been devoted to the purchase of new equipment and to the making of permanent improvements to their roadway and structures, and held that these items were not properly chargeable as operating expenses, for the reason that the shipper of to-day could not be properly required to pay the entire cost of an improvement or addition which was to be of permanent use. The opinion was expressed that sufficient net returns would appear if these items of permanent expense had not been included in the cost of operation.

Suit was brought to enforce the order of the Commission that the carriers desist from this advance, and in the Supreme Court, *Illinois Central R. R. Co. v. I. C. C.*, 206 U. S., 441, the railroads contended that this holding was manifestly erroneous, citing *Union Pacific R. R. Co. v. U. S.*, 99 U. S., 402. The court, however, fully sustained the Commission, distinguishing that case from the one at bar. The language of the court was as follows:

* * * The findings show that the old rates were profitable and that dividends were declared even when permanent improvements and equipment were charged to operating expenses. But may they be so charged? Appellants contend that the answer should be so obviously in the affirmative that it should be made an axiom in transportation. On principle, it would seem as if the answer should be otherwise. It would seem as if expenditures for additions to construction and equipment, as expenditures for original construction and equipment, should be reimbursed by all of the traffic they accommodate during the period of their duration, and that improvements that will last many years should not be charged wholly against the revenue of a single year. But it is insisted that *Union Pacific R. R. Co. v. U. S.*, 99 U. S., 402, establishes the contrary. That case was not concerned with rates of transportation or the rule which should determine them against shippers. * * * But such is not the relation or concern of a shipper of lumber. His right is immediate. He may demand a service. He must pay a toll, but a toll measured by the reasonable value of the service. The elements of that value may be many and complex, not always determinable, as we have seen, with mathematical accuracy, but, we think, it is clear that instrumentalities which are to be used for years should not be paid for by the revenues of a day or year; and this is the principle of returns upon capital which exists in durable shape.

It would appear therefore that both the court and the Commission are committed to the proposition that in fixing a fair return upon railroad property for the purpose of determining whether a given advance is reasonable the railway ought not to treat as a part of its operating expenses the cost of permanent improvements or extensions, and this must of necessity mean that the rates should not be sufficient to allow both the payment of dividends to stockholders and interest to bondholders and an additional sum for the purpose of improving and increasing the value of the property. Theoretically, this would seem to be just. Each generation may well be required to bear its own burden, and the stockholder should not obtain both an adequate dividend upon his stock and an addition to the value of his property.

It is urged, however, that in the public interest this Commission, for the purpose of preventing the excessive capitalization of our railroads, ought to adopt a different policy. Within certain limits it may be the right of this Commission to consider this question as one of public policy and not one of strict legal right. If the true interest of the whole community requires it, we should perhaps allow these railroads sufficient earnings with which to add to their properties in

addition to the payment of a return to their stockholders, even though there is no strict requirement of law which commands it. What, then, are the reasons which have been urged by the carriers for the adoption of this view at this time?

It is contended, first, that our railroads can not raise the necessary funds with which to make improvements and extensions and that therefore they should be allowed to impose rates which will provide these funds. It is said that most of our railway systems are covered by a general underlying mortgage; that whatever improvements are made become, when made, subject to the lien of that mortgage; and that it is therefore impossible to secure in any adequate way this advance of new money.

This argument does not appeal to us. We doubt the practical difficulty suggested, and, were it true, it is not apparent that the general public should stand responsible for the mistakes which have been made in financing these railroad systems. As previously observed, it would be much better for the Government to directly guarantee the bond or loan the money than to permit a general schedule of unreasonable rates for the purpose of taking care of particular instances of this nature.

It is strenuously insisted that railroads are being required to expend large sums in certain classes of improvements which do not add to the revenue-earning capacity of the property. Instances are the erection of expensive passenger stations in large terminals, like the one here in Washington, the abolition of grade crossings, the elevation of tracks through towns and cities, the adoption of safety appliances, etc. There is a public demand for these improvements which often takes the form of a legislative enactment or a municipal ordinance, and it is insisted that the public which demands should expect to pay for the improvement.

By way of illustration, let us take the elevation of tracks. Years ago, when the railway was constructed, there were no buildings along its line, but in process of time a town has grown up, streets cross the track at frequent intervals, and the municipality requires that the tracks be raised, and this is done at a very considerable outlay. Now, the railroads urge that this improvement does not add to the earning capacity of the road. It may save a trifle in the way of gatemen at crossings, and may somewhat reduce the casualties for which the railroad is liable, but, on the whole, it is an expenditure which adds nothing to the net income of the railway.

But just how is that a reason why this improvement should be paid for out of present earnings? As we understand the theory of the Commission in the *Yellow Pine case*, and the language of the Supreme Court in approving our holding in that case, an expenditure in the nature of a permanent improvement, which is to be enjoyed in the

future, must not be laid entirely upon the shipper of to-day. Why should the shippers of to-day pay for the elevation of these tracks? The improvement will continue and redound to the benefit of the public as long as the railroad lasts. If a new railroad were to be built where that one is the tracks would be elevated. Assuming that a proper allowance has been made between the difference of constructing the railroad at grade originally and subsequently elevating the tracks, the cost of the road is precisely the same as it would be were it a newly constructed railroad upon that location. While the railroad might very well be permitted to charge against operation any interference with its traffic which is due to the elevation of its tracks, or the entire difference in cost between the cost of the road as finally elevated and what it would have cost had it been so constructed at the beginning, it is difficult to see how it can, upon the theory of the *Yellow Pine case*, charge the entire expense of the improvement. In other words, where lies the difference between a revenue-producing and a nonrevenue-producing improvement? So long as the improvement is for the future the present must not be entirely taxed to provide it. The elevation of those tracks has added to the cost of the railroad; the value of the property which that company is using for the public benefit has been enhanced, and this justifies it in demanding from the public a greater return than formerly, but not in demanding the price of the improvement itself.

While this would seem to be the law of the situation, there is a suggestion of public policy which might under some conditions lead to a different conclusion. It is a wise thing for a nation as well as for an individual to lay up something for the future. This nation in time to come must engage in active commercial competition with the rest of the world. We must manufacture and sell against other nations. Railway rates will enter as an important factor into that competition. Not only the rate upon the raw material to the factory and upon everything which enters into the cost of living will be of consequence, but also the rate from the factory to the port. Germany and France to-day use their railroads to assist the home manufacturer as against his foreign competitor by allowing a special rate upon articles for export.

In the past we have enjoyed cheap raw materials. Our food has been cheap; our coal and our ores have been near the surface; our lumber has been plentiful. These resources are being exhausted; the cost of food is increasing; our forests are being depleted. We must go deeper for our coal. All this will render the cost of production more expensive, and it might be wise to lay up in our railroads a fund which should be of assistance to future generations in offsetting this tendency to increase the price, were there any assurance that the fund when provided could be made available. There is

the gravest doubt upon this point, for the reason that whatever is invested in these properties from earnings may belong, not to the public which has paid for it, but to the stockholders who have already received a full return upon their investment in the way of a dividend.

The president of the Pennsylvania Company testified that since 1887 his company had put into the Pennsylvania lines east of Pittsburgh \$262,000,000 from earnings. During all that time this company has also paid to its stockholders munificent dividends. Now, to whom belongs this \$262,000,000, a sum which, according to the statistical report of the Pennsylvania Railroad Company to this Commission for the year ending June 30, 1910, equals nearly two-thirds of the total cost of construction of the 2,123 miles owned by that company?

Suppose this Commission were required to fix a value upon the Pennsylvania lines east of Pittsburgh. Could any distinction be made between this sum which has accrued from the operation of the property and what has been paid in from other sources?

We are not required at this time to express an opinion upon that point. What the claim of the railroads will be when the matter finally comes to an issue is well shown by a question which was asked upon the argument and answered by that attorney who was urging most strongly the right of the railroad to accumulate a surplus for this purpose:

Question. The popular idea seems to be that these properties ought to be physically valued, and that the rate should be determined by the value of the property so fixed. In that case, would the surplus be entitled to be appraised as a part of the value?

Answer. As of the date that such a valuation takes place, the property as it stands belongs to the stockholders. That has been in accordance with the policy of the Government, and it would take a change in the policy of the Government to change that legal situation. So I think the valuation would necessarily be on the property as it stands.

In 9 I. C. C. Rep., 382, 417, the Commission, in considering the financial condition of the Lake Shore & Michigan Southern Railway, said:

The Lake Shore & Michigan Southern, on June 30, 1901, owned a majority of the capital stock of its competitor, the New York, Chicago & St. Louis Railroad Company, a majority of the capital stock of its connection, the Pittsburgh & Lake Erie Railroad Company, almost one-half of the capital stock of the Lake Erie & Western Railroad Company, and \$11,224,000 of the capital stock of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, besides smaller holdings in other companies. These stocks had been acquired, in addition to the payment of dividends not less than 6 per cent, for many years, out of net earnings. During the year 1902 it purchased, apparently out of surplus, \$4,728,200 of the capital stock of the Indiana, Illinois & Iowa Railroad Company, the entire capital being \$5,000,000.

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This company after paying 7 per cent dividend to its stockholders has a surplus each year sufficient to buy the control of a very considerable railroad. Before holding that its revenues ought to be further increased, or that the Government ought not to exercise any supervision over those revenues, it may be well to consider what the bearing of this process, continued for half a century, is to be upon two of the great economical problems before us, namely, the distribution of wealth and the control of the avenues of transportation.

The carriers in the proceeding now before us have claimed that they should be allowed to invest in improvements and additions to the property an amount equal to that paid by way of dividends to stockholders. In the year 1910 railroad dividends aggregated \$405,131,650. If this sum were to be invested in our railways annually for the next half century it would amount at the expiration of that period to \$20,256,582,500, not regarding the item of interest. This sum is far in excess of the present total capitalization of our railroads. It is not improbable that it may equal the total amount which will be expended in railway development in the next half century, and upon this vast amount which has been accumulated in addition to a fair return upon the investment railway stockholders will claim a return. Every dollar which has thus been added to the value of these properties justifies, according to the claim of these defendants, an added net return, and it is further claimed that the Constitution of the United States protects these defendants in the right to impose such charges as will yield this return.

It is evident that until the status of this surplus is determined by legislative action or judicial interpretation, this Commission can not properly permit an advance in rates with the intent to produce an accumulation of surplus for this purpose.

It is also said that railroads should be allowed to accumulate a surplus for the purpose of providing, for the time being, for the interest charge on new capital, which represents an improvement which is necessary, and which will finally be profitable, but which does not pay an immediate return.

To this claim within certain limits we assent. In the development of a railroad it must often invest money in permanent structures like a passenger station, which will not add for the time being to its revenues, although it may do so finally. It is reasonable to say that such rates may be charged as will permit the accumulation of a fund to take care of cases of this sort. But to this surplus fund stockholders should be required to contribute by reasonable reduction in dividends. If such a system of financing is to be adopted as will render the payment of dividends upon common stock as certain as those upon preferred stock, then the dividend to the holder of the common stock should be no larger.

It is further urged that there is an item of obsolescence in the development of a railroad which should be recognized in the surplus. New methods demand new facilities. Changed conditions require changes in construction. That which was right at the outset becomes valueless and must be replaced in process of time.

If the accounts of a railway are kept according to the present requirements of the Commission the cost of construction as shown by its books can contain no factor of obsolescence, for when a thing goes out of service the value of that thing must be written off. This has not been uniformly true of construction accounts in the past, and there always is this element in the development of a railway, as will be best understood by an illustration.

Assume that a railroad is originally constructed over a mountain, it being more economical to haul the traffic up and down the steep grades than to incur the great outlay which would be required by constructing a tunnel. With the development of traffic the time comes when this mountain must be pierced, and a tunnel is accordingly constructed at a large expenditure. When the tunnel is put into service and the line over the mountain abandoned the cost of the tunnel is added and the cost of the abandoned railroad subtracted from construction cost, so that, as shown by the books, the cost of construction is the same as though the tunnel had been built at the outset.

Now, it had been certain from the day of the original construction of that railroad that in time the tunnel must be built. Each year the day drew nearer when the line over the mountain would no longer be used, and therefore each year subtracted from the value of that line. It may well be said that the railroad should be allowed to accumulate a fund out of its revenues from operation against the time when this piece of railroad must be entirely thrown away. Under our present system of accounting railways are required to make a depreciation charge with respect to their equipment for the purpose of providing against contingencies of this sort; but they make no such charge with respect to their way and structures, and it seems proper that the accumulation of a surplus should be allowed in this view.

Then, too, a railroad must be allowed to accumulate a surplus in good years which will offset bad years, and if its financial position is to be a reasonably strong one that surplus must be large enough to remove doubt from the mind of the investing public. We think that a railroad in ordinary years should be permitted to show a substantial surplus over and above the payment of a reasonable dividend. This is necessary to provide for interest on capital invested in improvements which will not yield an immediate return, to take care of the element of obsolescence, and to tide over years

of depression. The amount of this surplus, if estimated in comparison with the dividend to stockholders, must depend upon the relation between stock and bonds and between value and capitalization.

The rates advanced are mainly class and commodity rates applying between the east and the west, and it is well understood that of these rates the Chicago-New York rate furnishes the base. Official Classification territory west of Buffalo and Pittsburg is divided into groups which take a percentage of the Chicago rate, so that an advance of the rate between New York and Chicago automatically works an advance in all this territory. Since the present relation of rates must be maintained, and since the same rate must be made by all lines, it follows that if any single route be required to maintain the present scale between New York and Chicago no advance by any line can be made.

The question therefore arises, and is one of very great difficulty and importance, What line shall we examine for the purpose of determining whether its net revenues may properly be increased? The Delaware, Lackawanna & Western carries a considerable amount of this traffic from New York to Buffalo, and it may be carried from there to Chicago under joint tariffs now in effect by the Lake Shore & Michigan Southern. The cost of the Delaware, Lackawanna & Western, as shown by its statistical return for the year 1910, is \$147,880 per single-track mile. Its operating income for the same year was \$16,641 per mile as against \$9,581 per mile in 1901. Its corporate income for the year amounted to 49.77 per cent upon its outstanding capital stock, having increased to that figure from 16.63 per cent in 1901. The price of its capital stock on December 31, 1901, was \$258 per share as compared with \$526 on December 7, 1910, which was the date of the latest sale. Plainly, this road is suffering from no financial strait which would justify an increase in these rates owing to the increase in wages.

The Lake Shore & Michigan Southern Railway, whose financial condition will be considered more in detail later, makes almost as favorable a showing. In the year 1910 that company paid its fixed charges, a dividend of 18 per cent upon its capital stock, and had remaining over \$5,000,000 surplus for the year.

It is plain that if these two roads were to be considered alone no justification could be found from a revenue standpoint for these advances, and that is the question before us. On the other hand, there are lines operating in this territory where the showing in favor of the advance, having reference to their financial necessities, would be a strong one. What lines, then, shall be examined for the purpose of reaching a conclusion in this matter?

This general question was presented to the Commission in the *Spokane case*, 15 I. C. C. Rep., 376, where it was said, at page 392:

Now, the complainants say that it is the business of the Commission to take the least expensive of these routes and to determine these rates upon the basis of the investment in that route. We should allow the Great Northern Company, if that be the least expensive, what will be a fair return upon its property considering the financial history of that company, and no more, even though the rates thus established when applied to the business of its competitors would deprive them of a fair return upon their investment.

The defendants insist that exactly the opposite course should be followed. They urge that a railroad is entitled to a fair return upon its investment, and that this rule applies to all railroads alike. This is the right of the railroad laboring under disadvantages of location and operation, as well as of that one more favorably circumstanced. Hence the Commission must consider that railroad whose net earnings will be least, for if it establishes rates which only yield fair returns to the road most favorably situated, it of necessity knowingly and intentionally deprives every other road of a fair return upon the value of its property.

* * * * *

The city of Spokane, argue the complainants, is entitled to the cheapest means of transportation between St. Paul and Spokane. The Government may construct a railway or it may delegate that duty to an agent. If it elects to employ an agent, it may require it, and, indeed, must require it, to establish reasonable rates with respect to its own line, even though this should bankrupt other lines already in existence.

This claim finds some support in *Brunswick & Topsham Water District v. Maine Water Company*, 99 Me., 371, a well-considered case, decided in 1904. That proceeding was for the condemnation by the water district of a portion of the plant of the Maine Water Company, the question being the basis upon which damages should be assessed. The water district claimed that the cost of construction furnished the true measure of damages, but the court held that the defendant was entitled to whatever its property was fairly worth as a going concern furnishing water to the people of that community at reasonable rates. Being inquired of what was meant by a reasonable rate, it answered that the cost to the community of supplying itself by the cheapest means would be a very important element in determining that rate.

These cases show, what indeed must be evident upon general principle, that the charter of a public-service corporation does not guarantee to it any return upon its investment. The public may perform the same service or it may charter another corporation for that purpose without reference to the effect upon the revenues of the existing company.

While, however, this is the law, we do not think that the result contended for by the complainant of necessity follows when these principles are applied to the railways of this country. There is a wide difference between a water system which supplies a single community and a railroad which is part of a commercial and industrial whole supplying many communities. The city of Spokane could not develop if served by the Great Northern Railway alone; nor can we look wholly to the interest of Spokane. The whole territory served by these defendant lines must be considered and the existence of all these railroads to that territory is absolutely essential. These railroads can not exist unless rates are established which will yield a fair return upon their property. We must, therefore, in fixing these rates, have regard not altogether to any one

particular railroad, but to the whole situation, and must consider the effect of whatever order we make upon all these defendants.

This rule was adhered to in the *Kindel case*, 15 I. C. C. Rep., 555, in the following language:

In the *Spokane case*, 15 I. C. C. Rep., 376, we held that the reasonableness of a rate between two points served by two or more carriers could not be determined by consideration alone of that line which is shortest and most favorably situated as to operations, earnings, etc., but that the entire situation must be considered.

* * * * *

As already suggested, we can not in determining a competitive rate select that railroad which is the shortest or the most advantageously situated and limit the rate to what would allow that property fair earnings. We must consider this entire situation and determine a reasonable rate not merely with reference to the Union Pacific, but with reference to all lines serving these Colorado common points via reasonably direct lines.

What is the reasonably fair application of this rule to the case before us? The Pennsylvania lines extend from New York, Philadelphia, and Baltimore to Chicago and St. Louis and reach most of the important cities west of Buffalo and Pittsburg by their own rails. In the year 1909 the earnings of that system were more than one-quarter of the aggregate earnings of all the 41 railroads previously named, which embrace practically all lines in the Official Classification. If reference be had to those lines mainly interested in this traffic the percentage of income would be still larger. This Commission might very well say that it would make the Pennsylvania system the standard by which to measure the reasonableness of their rates. On the whole, however, it seems fairer to include with the Pennsylvania the New York Central lines upon the north and the Baltimore & Ohio upon the south. The freight revenues of these three systems would be nearly one-half of the total revenues of all railroads in the territory in question, and they transport this traffic by their own rails between all important places. In 9 I. C. C. Rep., 382, this Commission considered the justice of certain advances in grain rates between Chicago and the Atlantic seaboard and it there held that whatever rate might reasonably be imposed upon these three systems must be held to be a reasonable charge for that service by all lines. We hold to the same view in this investigation. We do not mean that other lines should not be considered, but that these systems may be taken as typical. Under rates reasonable for these three systems there may be lines whose earnings will be extravagant, but that is their good fortune. There may be lines which can not make sufficient earnings, but that is their misfortune. We ought not to impose upon this territory, for the purpose of allowing these defendants additional revenues, higher rates than are adequate to these three systems considered as a whole.

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The exact problem to be solved must be kept in mind. The defendants have attempted to show that the cost of operation has increased and will increase in proportion to gross operating revenue. This is not the question. Even though the percentage of net to gross is less, still the total net may be more and the percentage of net to value may also be more. We are to determine whether the net return of these carriers upon the value of their property devoted to the public service will be sufficient without an advance in their rates.

In prosecuting this inquiry certain elementary principles may be noted.

Viewing the freight rates of this country as a whole, it will be found that rates are usually the lowest in those sections where the traffic is most dense. It has been frequently said by railroad witnesses that this ought to be so because the freight rate should decrease as the density of traffic increases. Stated in the most general terms, the reasons are these:

The cost of constructing a railroad which will handle economically traffic producing \$5,000 per mile of gross revenue is substantially the same as though \$10,000 per mile in traffic were handled. The grading, the ties, the embankments, the stations, would all be practically identical.

The cost of maintaining this road is not much greater under the larger volume of tonnage than with the smaller. About the same number of men are required and about the same amount of material.

Certain elements of cost in the operation of the road are the same whether the traffic be at the higher or the lower figure, as, for instance, the stationmen, the telegraph force, the signalmen, etc.

In recent years very great economies have been introduced into the handling of traffic upon most of our railroads. Curves have been eliminated and grades reduced, larger cars and stronger engines are employed. An engineer and a trainman handle more tons per mile to-day than 15 years ago; a ton of coal hauls more tons of freight 1 mile to-day than in 1896.

Under the larger volume of business the car loading and the train loading each lends itself more readily to economical operation.

It has been noted that in the 14 years from 1896 to 1909, inclusive, the tonnage of our railroads increased more than 100 per cent. This, acting in the manner above indicated, tended largely to increase the net revenues of the railways. Not only did these causes tend to produce a lower cost of operation per unit, but the number of units was more than doubled. This makes very strongly for a reduction in the freight rate.

Upon the other hand, there are a set of influences which work in exactly the opposite direction. Comparing 1896 with the present

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year, nearly all kinds of supplies which enter into the construction, maintenance, and operation of a railroad have very much increased in price. Nearly one-half the cost of operation is labor, and it is said that within that period the wages of railroad employees have advanced 30 per cent. We are told that not only has the price of a day's labor increased, but that the efficiency of that labor for various reasons has decreased. Legislative enactment, both of the Federal and of the State Governments, has in the interest of the public and the employees required the employment of additional labor. Laws like the employers' liability act will add to the damages which railroads must pay for injuries to their employees.

The public is demanding a better and a safer railroad, and this finds expression in the requirement for the abolition of grade crossings, the elevation of tracks, the use of safety appliances, the installation of block signals, the substitution of steel cars for wood cars, and in a great variety of other ways.

The economies just referred to, like the reduction of grades and the use of larger equipment, have necessitated large outlays of capital, and upon this an additional return must be earned.

Taxes have increased and are increasing more rapidly than the value of the property.

All these influences tend strongly toward higher freight rates, for they not only add to the cost of operation, but they increase the cost of the plant, upon which a return must be made.

The action of these contending influences is extremely complex and the result can not be affirmed with certainty except from actual experience. This matter was considered by the Commission *In re Southwestern Rate Advance Case*, 11 I. C. C. Rep., 238, where we reached the conclusion that, although wages had increased, a dollar invested in labor moved a ton of freight farther than under a lower wage scale. Our general conclusion in that case was that, on the whole, increases in supplies and labor had not increased the operating cost per unit in the territory covered by that investigation.

This was in 1904. There is nothing in the record before us from which we can conclude with any certainty whether since then the cost per unit has increased or decreased. The carriers insist that it has increased. Including taxes as a part of the expense of operation, gross operating revenues have increased by a much larger per cent than operating income in case of nearly all these defendants. Looking to the Baltimore & Ohio, the Pennsylvania Railroad, and the New York Central & Hudson River, we find that in every case the percentage of operating expenses to operating revenues was greater in 1910 than in 1904 and greater than the average for the seven years.

This would tend to show that the cost per unit had increased since the average receipts per ton-mile upon these lines have remained fairly constant. Upon the other hand, the Pennsylvania Railroad distinguishes in its accounts between the cost of transacting its freight and passenger business and states to its stockholders from year to year the cost per ton-mile of handling its freight traffic. According to these reports, the cost to that company for the calendar year ending December 31, 1909, was lower than for any other year in its whole history, with the exception of 1901, when it was exactly the same. And this result was obtained although taxes were included in 1909 and not in 1901. The inference from the figures given by the Pennsylvania Railroad is that since 1894 the unit cost of handling freight upon that system has remained about stationary, fluctuating somewhat in either direction from year to year.

The question for our consideration is, What is likely to be the result of these contending influences for the future?

Beginning in 1896 the cost of materials and supplies of all kinds rapidly advanced up to about 1902, since when there has not been, on the whole, much change. Supplies were somewhat lower in 1903 and somewhat higher in 1907, but they had fallen in 1910 to below the average for the last five years. The Baltimore & Ohio Railroad filed a statement showing the unit cost of and the total amount paid for the various supplies purchased by it in the years 1907 and 1910, from which it appears that, applying to the supplies actually purchased in 1910 the prices of 1907, the total would have aggregated about \$500,000 above the amount actually paid in 1910. This does not include the item of coal, in which there may have been some trifling advance upon that system, and in which a material advance seems to have occurred upon some western lines.

It seems probable that the price of lumber of all kinds, of which large quantities are used in railway construction and operation, may increase in the future, since the supply itself is limited; but this increase is quite likely to be offset by the introduction of changes in the use and the substitution of one material for another. The treated tie will take the place of the untreated tie; iron will be used instead of wood; concrete is already being substituted for both wood and iron.

There is also likely to be some gradual advance in the price of coal, and this is, of all items, the most important to the railway. This advance will not be considerable, unless there should be some general increase in the wages of mine workers, which, again, is hardly likely under present conditions.

It seems fair to assume, therefore, that the general cost to the railroad of its supplies will not be greater in the immediate future than it has been in the immediate past.

The same remark would seem to apply to wages as they stand after the recent increases. Railroad labor, certainly organized railroad labor, is probably as well paid, and some say better paid, than labor of other kinds, upon the average. Railroad employees will hardly expect to receive wages which exceed those paid to other forms of labor for the same grade of service, and this Commission certainly could not permit the charging of rates for the purpose of enabling railroads to pay their laborers extravagant compensation as measured by the general average compensation paid labor in this country as a whole.

It is likely, therefore, that the labor item of these railroads will not in the immediate future much increase unless there should be a general advance in all prices.

The demands of the public will continue to add both to the expense of operation and to the cost of the plant. Greater safety of operation will be insisted upon and this will require the outlay of considerable sums upon way and structures, and also extensive changes in equipment, and will still further add to the cost of operation itself, by requiring the employment of additional men and the use of those men under different conditions.

It is also probable that taxes will continue to increase more rapidly than the increase in the value of the property.

Just how much all this will add to the cost of operation or to the capital account upon which earnings may be demanded can not be predicted with any degree of certainty.

It was said by railway representatives that this increase in expenses can no longer be offset by the introduction of further economies in the future as in the past, and it seems probable that the same sort of economies can not be relied upon to the same extent. Grades have been already reduced and curves eliminated, so that little remains to be done upon our first-class railway systems in that direction. Cars and engines are about as large as they profitably can be. An examination of the statistics of the Pennsylvania Railroad, the New York Central, and the Baltimore & Ohio shows that for the last five years there has been but little improvement in car loading or train loading. The president of the Baltimore & Ohio testified that his road was not yet in shape to handle its traffic in the most economical manner and that a large sum of money had been appropriated for the purpose, in part, of bringing that property up to a higher state of efficiency, but it is generally understood that upon the New York Central and the Pennsylvania this work has been substantially finished.

It was, however, earnestly insisted by the shippers that the railroad might and should find other kinds of economies with which to

make good this increase in wages. Several prominent manufacturers testified that in their business in recent years wages had been advanced, but that they had not been able to make corresponding advances in the price of their product and were therefore forced to look about for other ways in which to take up the increase in the cost of production. It was claimed that by the introduction of what was termed "scientific management," the purpose of which was in various ways to make labor more efficient, at the same time increasing the wage paid the laborer himself, much more than the amount of these advances could be saved. One gentleman, who described these methods, testified that they had been introduced to some extent into the operations of railways with remarkable results, and that from a careful analysis and computation he was satisfied that not less than \$300,000,000 annually could be saved by the proper application of these methods to the business of railroading in the United States.

It is difficult to see exactly what application the Commission can make in this case of this testimony. The witness who apparently had most to do with originating and applying these methods testified that they were in actual operation in not over one-tenth of 1 per cent of all the manufacturing establishments of this country. The system is everywhere in an experimental stage. To some extent it has been tried and is now being tried by our railways. The representatives of railway labor who appeared before us stated that these methods could not and should not be introduced into railway work. Upon this record we can hardly find that these methods could be introduced into railroad operations to any considerable extent, much less can we determine the definite amount of saving which could be made. We can not therefore find that these defendants could make good any part of these actual advances in wages by the introduction of scientific management.

No general advance in rates should, however, be permitted until carriers have exhausted every reasonable effort toward economy in their business. The inducement to adopt methods of this kind which necessity creates in private occupations does not exist to the same extent in railroad operations. We can not escape the impression that railroad operators have not given to this important subject the attention which it deserves. An examination of the statistics before us shows the widest divergence in the cost of doing the same thing upon different railroads. It appears, for example, that the cost of maintaining locomotives per train-mile for the year 1910 was 9.22 cents upon the Baltimore & Ohio as compared with 6.15 cents upon the Boston & Maine. It is impossible to resist the conviction that our railroads have not in the past given sufficient attention to these details, and while we can not to-day upon this record find that greater

economy can be or ought to be practiced, railroads in the future must be prepared to explain these apparent differences in their operating costs and to show reasonable diligence.

The railroad is a monopoly. Its rates are not made under the influence of competition. The significance of this is forcibly illustrated by what developed at a recent hearing in Chicago touching grain rates by lake and rail from Chicago to the seaboard.

It is well understood that package freight is carried from the seaboard to Buffalo by rail and from Buffalo to Chicago by water at a rail-and-lake rate. The steamers which handle this business from Buffalo to Chicago are all owned by the railroads, and the rates for the handling of this traffic are made in exactly the same way that the rail rates are and bear a certain relation to the rail rates. Within the last six years these rates have been twice advanced, in each case the water carrier receiving the entire advance, and it is now proposed to advance them for the third time.

Grain moves in large quantities from Chicago to Buffalo. While it is carried by these boat lines which handle the package freight to some extent, it moves mainly by tramp vessel at rates which vary from day to day and which are highly competitive. Now, it appeared in the investigation referred to that while the rates upon package freight upon the Lakes had been steadily advanced, the rate of lake carriage upon this grain from Chicago to Buffalo had within the last five years declined from 10 to 25 per cent. The vessel owners stated that the equipment in which this business was handled was the same now as then; that the wages paid their employees had advanced, but that, owing to competition, it had been found impossible to increase the rate.

The transportation of this grain from Chicago to Buffalo is really a part of its through carriage to the point of consumption beyond Buffalo. It moves by water up to Buffalo and by rail from there to destination. Now, while within recent years the lake part of this rate under open competition has declined, the rail part has increased by nearly 100 per cent. Seven years ago the rate on ex-lake wheat from Buffalo to New York was $3\frac{1}{2}$ cents per bushel. To-day it is $6\frac{1}{2}$ cents. This does not show that the lake rate on grain is sufficiently high, nor that the rail rate is too high, nor is it certain that this intense competition finally redounds to the benefit of the public, but it does show the wide difference between these railroad charges before us and competitive prices.

The vice president of a railroad company testified during the hearing that his company could buy locomotives of but two concerns; that on account of the freight rate, as a practical matter, it could

buy Bessemer steel rails of only two companies; that structural iron of the larger sizes could only be procured from four or five companies; and that in the purchase of cars he was confined to seven or eight independent plants. It is well understood that in recent years the price of structural steel in larger sizes and of steel rails has been uniformly maintained. It is also well understood that the same men who are potential in the United States Steel Corporation and the American Locomotive Works are influential in directing the policy of our railroads.

Now, if, to use the popular nomenclature, the steel trust is to determine the price which shall be paid for rails and for bridges; if the locomotive trust is to determine the price of engines, the car trust of cars, and the labor trust of labor, and if the railways have only to meet the demands made by these combinations and charge over to the public by an increase of rates whatever is paid, a most unfortunate situation has developed. There is nothing in all this which enables us to say that railways do pay extravagant prices, and if we are satisfied that present rates do not yield an adequate return we should, notwithstanding these conditions of monopoly, unhesitatingly approve an advance, but in view of the monopolistic character of the business we should proceed with caution.

Business, both freight and passenger, will continue to increase but not probably at the same ratio as for the past 15 years. Even if this increase in business does not lessen the unit cost of operation it ought to contribute to the prosperity of the railways, since the cost of the plant does not, ordinarily, increase as rapidly as do gross operating revenues. Thus, the amount of capital invested in the railroads and equipment of the United States, as shown by their capitalization, increased in 10 years, from 1899 to 1900, but 41 per cent, while the units of traffic increased 81 per cent and gross receipts 88 per cent.

This statement may be somewhat misleading. Originally, the capital accounts of our railways contained much which did not represent actual investment, but in the last decade large amounts have gone into our railways from earnings which are not represented by increased capital.

It should also be noted that while increase of business is ordinarily of advantage to a railroad and should ordinarily tend in the direction of lower rates, there may be, as applied to individual railroads, possibly as applied to railroads in particular localities, an exception to this rule. This thought may be illustrated by a practical example.

The Central Pacific Railway between Reno, Nev., and Sacramento, Cal., was expensive to construct. The grades are extremely heavy; there are many miles of costly snowsheds and tunnels, while the track

itself finds a precarious footing upon the sides of the mountains. To double-track this road or to provide any considerable amount of additional track would require a large outlay.

Between 1896 and 1907 the business of the Southern Pacific over this portion of the Central Pacific, as well as over other parts of its system, largely increased, but it was said in testimony before the Commission that in 1907 the practical limit of the road between these points had been reached and that if any considerable amount of additional business was transacted it must either be at the expense of economical management or at an enormous cost to provide additional tracks. Assuming this to be so, it is evident that the Southern Pacific profited by increase of traffic up to 1907; it is equally evident that a moderate addition to that traffic might be a damage and not an advantage.

Assume, for example, that the Southern Pacific had begun in 1907 to double track this piece of road and had completed the work in 1910 at an expense of \$100,000 per mile. The amount of traffic handled would not have materially increased. The cost of maintaining the road would be greater. The cost of operation would perhaps be somewhat less, since the business could be handled to better advantage. The net result would be practically the same, but the cost of the plant would have been increased by an amount requiring on a 4 per cent basis additional net earnings of \$4,000 per mile. When it is remembered that the average net earnings per mile of the railroads of the United States for the year 1909 were but \$3,505, it will be seen that a considerable period must probably elapse before this improvement would become a profitable one.

In this illustration increase of business to a certain point is desirable; beyond that point it is undesirable, unless that increase can continue to the further point where the additional track is utilized to an extent which justifies the expenditure. It is manifest that in determining a reasonable rate we could not be guided justly by conditions either in 1907 or in 1910.

There is some reason to believe that railroads generally in Official Classification territory were in something the same condition in the year 1907 as was this piece of the Central Pacific, according to the statement of its lessee. There had been for some 12 years a rapid and constant development of business, but the feeling had been that this increase could not continue. Railroad operators as a whole had not felt justified in making the outlay which would be required if the growth of business was to continue. In consequence, the facilities of all kinds in that year were inadequate to the traffic offered.

The business of 1907 was in fact handled but not in a way satisfactory to the public. As this Commission well understands from its own investigations, transportation conditions were deplorable. A continuance of those conditions should not have been and would not have been tolerated. It was the duty of our railroads to provide at once increased facilities. That should have been done even though the traffic of 1907 was not to be exceeded.

Now, it would be unfair to estimate a due net return upon the results of the year 1907. Upon the other hand, there may be some reason to suppose that the outlays made since 1907 are greater than would be required in view of the business of that year. It may be that the conditions to-day more nearly represent the situation as it would have existed upon the Central Pacific in 1910 had that road been double-tracked.

Statements filed by the Baltimore & Ohio, the Pennsylvania Railroad, and the New York Central show that upon these lines the freight tonnage and the freight revenues of 1907 have never since been equaled, yet the Pennsylvania Railroad expended between June 30, 1907, and June 30, 1910, according to its construction account, \$68,000,000; the New York Central, \$38,000,000; and the Baltimore & Ohio exceeding \$16,000,000.

As a general proposition it may not be at all certain but that increase of business in densely populated sections may even in the long run be a damage rather than an advantage, mainly by reason of the enormous terminal expenses which are necessitated in caring for this business. Within the last seven years the Pennsylvania Railroad has expended \$100,000,000 in providing a passenger terminal in the city of New York, more than the entire capitalization of the Pittsburgh, Fort Wayne & Chicago, over which the greater part of the traffic of the Pennsylvania system moves between Pittsburg and Chicago. When its passenger improvements are completed in the city of New York the New York Central will have expended in that betterment \$82,000,000, nearly one-half the capitalization of that magnificent property, the Lake Shore & Michigan Southern Railway, which in the year 1910 earned above its fixed charges a corporate income exceeding \$16,000,000.

It may be worthy of consideration just how far these freight rates can properly be increased on account of these extremely expensive improvements required by the passenger service of those lines.

During the last 15 years the net result from all these causes which we have been considering, increased cost of operation, increased wages, the public demand for a better railroad, increase of traffic, and economies in the handling of that traffic, has been very greatly to the benefit of the railroads. The improvement was especially

marked up to 1900, but since then, while the year ending June 30, 1908, was a poor one, and that ending June 30, 1909, not up to the average, there has, on the whole, been a steady advance, so that the year 1910 saw the highest point in net railroad earnings, estimated upon any basis. There has, however, entered into this result, as a most important factor which must not for a moment be lost sight of by one who would correctly forecast the future, an increase in the rates of transportation. These increases have mostly occurred since the year 1899, and have arisen in several ways.

In 1896 the payment of rebates upon competitive traffic was almost universal. The effect of this upon net revenues was fully appreciated by intelligent railroad operators, and many attempts were made to stop the practice and secure a maintenance of the published tariff. Beginning about 1900 these efforts bore fruit in certain quarters and the rebate gradually disappeared, being finally in main eliminated by the Hepburn amendment of 1906.

It is impossible to say how much has been added to the net receipts of the railroads from this cause, but the amount is great. Upon certain kinds of traffic in Official Classification territory this has been particularly true. We know from the investigations of the Commission that the Pennsylvania system and the New York Central bought a large interest in the stocks of the Baltimore & Ohio, the Norfolk & Western, and the Chesapeake & Ohio for the purpose of acquiring such an influence in the management of those companies as would enable them to compel an observance of the published tariff. We know that this result did transpire and that millions of dollars annually were saved by this alone.

Within the last few years a great many concessions which competition had forced in the way of special privileges have been withdrawn or are now charged for. In former days free storage was accorded; demurrage rules were but little enforced; traffic was held indefinitely for reconsignment; reconsignment was permitted without charge; switching was absorbed; free cartage was accorded, etc. To-day storage and demurrage charges are rigidly enforced; in some places track storage charges have been established; the privilege of free reconsignment has been much curtailed. The same process has gone on in reference to numbers of similar concessions, and this, while but little in the individual case, has amounted to much in the aggregate.

The tariff rates themselves have been in many cases advanced. This has been true of the rates upon soft coal from the mines to tidewater. It has been true of rates upon grain and grain products from Central Freight Association territory and upon ex-lake grain, as well as upon many of the coarser commodities. The tonnage of these articles is enormous and the resulting increase in revenue must have been considerable.

While the gross amount of the increase resulting from all these sources can not be definitely known, it is indicated in Official Classification territory by the advance in the rate per ton-mile. The average per ton-mile rate of the Pennsylvania in 1900 was 5.04 mills; in 1910, 5.80 mills; of the Baltimore & Ohio, in 1900, 4.56 mills; in 1910, 5.77 mills; of the New York Central, in 1900, 5.58 mills; in 1910, 6.25 mills.

This increase in the ton-mile rates as applied to the number of ton-miles handled in 1910 would have amounted, in round numbers, upon the Pennsylvania to \$15,500,000; upon the Baltimore & Ohio to \$14,550,000, and upon the New York Central to \$6,099,000. These figures do not exactly represent the value of these increases, but where the comparison is upon the same system they are roughly correct, since the character of the traffic does not change greatly from year to year.

In the future no increase in revenue can be hoped for from a more thorough maintenance of the published rate, since that rate is now maintained. Something, but not much, will be gained by charging for privileges not charged for in the past. In the main, whatever advance occurs in the rate must be by an increase in the published tariff.

To recapitulate:

The cost of supplies will not much advance.

Wages will not much increase.

The demands of the public will continue to grow.

Traffic will increase, but the same advantage may not accrue to carriers in this territory in the future as in the past.

Something should be expected from the introduction of additional economies, but perhaps not to the same extent as in the past.

During the last 11 years the rate has advanced. Should it further advance, which now means, Should the published tariff be advanced?

In answering this question with respect to the three systems selected as typical, we should inquire:

What were the net revenues for the year 1910?

What would those revenues have been had the present wage scale been applied to the operations of that year?

Would the revenues resulting from the application of the present wage scale to the operations of the year 1910 have been sufficient for that year?

Will the revenues which would have resulted in 1910 from the application of the higher wage scale be likely to increase or decrease in the future, and if sufficient in 1910 will they continue to be adequate?

In the prosecution of these inquiries we may first take the southernmost of these systems, the Baltimore & Ohio.

THE BALTIMORE & OHIO RAILROAD.

The operations of this company for the purposes of the present examination date from the year 1899 when, after a receivership of some years, the property was restored to its owners. The operations for the year 1899 are not fairly indicative of the capacity of the system and may be disregarded.

This company has owned substantially all the mileage which it operates. Beginning with the year 1901 that mileage, single track, was 3,192 miles, which had increased in 1910 to 4,333 miles. Perhaps the fairest comparison is obtained by taking all tracks, including second and third and switch tracks. So computing, the road had in 1901 a mileage of 5,466 miles, which had increased in 1910 to 8,215 miles. This shows an increase of 36 per cent in single-track mileage and 50 per cent in all tracks. Ordinarily, railroad systems increase by taking on outlying roads upon which the density of traffic is less than upon the parent stem, so that the result is rather to decrease than to increase all-track mileage in proportion to the single track. The figures in case of the Baltimore & Ohio would indicate that the system had in the 10 years embraced been greatly improved by the construction of additional main line tracks and of additional switch tracks.

The cost of construction as given by the books of this company is not probably of much significance. The system is made up of a great number of smaller properties constructed as independent lines. According to our understanding, the cost of construction, as shown by the books of the Baltimore & Ohio, is simply an aggregate of that shown by the books of these subsidiary companies and under the circumstances could hardly represent the actual fact.

There is also some manifest error in the amount given for the year 1910, since that item declines from \$406,000,000 in 1909 to \$281,000,000 in 1910, while the capitalization of the company increases \$86,000,000 in the meantime.

Taking the figures for what they are worth, we find the cost of construction in 1901 to be \$267,000,000, which had increased in 1909 to \$406,000,000. Stated for single-track mileage, this would be \$83,724 per mile in 1901 and \$102,747 per mile in 1909. Perhaps the fairer statement is in terms of all-track mileage, which would give \$48,897 in 1901 and \$55,280 in 1909.

The total capitalization of the company in 1901 was \$306,000,000, which had increased in 1910 to \$565,000,000. Stated in terms of single-track mileage, this would be \$95,813 per mile in 1901 and

\$130,410 per mile in 1910, or in all-track mileage \$55,956 in 1901 and \$68,788 in 1910.

At the outset this capitalization was made up of \$202,000,000 funded debt and \$104,000,000 capital stock. In 1910 the funded debt had increased to \$353,000,000 and the capital stock to \$212,000,000.

It should be stated that the funded indebtedness above given is taken from the return of the Baltimore & Ohio Railroad to this Commission, but is somewhat in excess of the same figures given in the brief filed by that company.

The total operating revenues were \$47,000,000 in 1901 and \$90,000,000 in 1910, an increase of more than \$43,000,000. Stated in all-track mileage, the increase would be from \$8,547 per mile to \$10,728.

The operating income for 1901 was \$15,000,000, and this had increased in 1910 to \$24,000,000.. Stated in all-track mileage this would give \$2,774 per mile in 1901 and \$2,915 in 1910.

Stated in percentages these increases are:

	Per cent.
In total operating revenues.....	91.4
In total operating income.....	60.2
Income per single-track mile.....	16.2
Income per all-track mile.....	5.1

From these figures it will be seen that during the decade operating revenues have increased more in proportion than net revenues.

To this operating income certain additions from rents and stocks and bonds owned were made amounting to \$857,000 in 1901 and \$4,000,000 in 1910, and total deductions in the way of rents and interest upon the funded and floating debt amounting to \$8,000,000 in 1901 and \$12,000,000 in 1910, leaving, after the payment of operating expenses, taxes, and all fixed charges, a corporate income for the year 1901 of \$7,805,000 and for the year 1910 of \$16,256,000, which amounted in 1901 to 7.48 per cent upon its capital stock outstanding and in 1910 to 7.66 per cent, and these percentages are just about the average for the entire 10-year period.

The fact that the corporate income was as large in proportion to outstanding capital stock in 1910 as in 1901, although net income had not increased as rapidly in proportion as gross income, is accounted for by the further fact that the fixed charges of the company, including rents and interest upon its funded debt, had not increased in the same ratio with operating expenses. It would further appear to be true, although in the confused state of the returns of this company it can not be affirmed with certainty, that gross income had increased during the 10 years by a larger per cent than the total increase of capitalization.

The preferred stock of this company is 4 per cent, noncumulative, and this dividend has been paid regularly since the reorganization in 1899, leaving, after the payment of the same, a large amount available for dividends upon common stock or the improvement of the property. This preferred stock has sold at about \$90 per share, yielding approximately $4\frac{1}{2}$ per cent.

The common stock sold in the year 1899 for about \$54. This price had risen to \$98 in 1901, and it has since sold, according to the market, at from \$85 to \$114. It now stands at about \$107.

There is nothing before us to show the terms of the reorganization. There was no foreclosure sale, and whatever was done in the way of changing or scaling securities was by agreement. It does not appear what the \$152,000,000 of common stock actually represents, nor what it cost the owners of that stock, by the terms of the reorganization. The capital account materially exceeds the cost of production, as shown by the books of the company, and the per mile capitalization strikes us as rather high.

We express, however, no opinion as to the relation between the value and the capitalization of this property. We accept for the purposes of this investigation that capital account as we find it, and certainly the stockholders of the Baltimore & Ohio Railroad Company can not claim upon this record that this property should be allowed to make earnings in excess of what would yield a fair return upon that basis.

It should be noted that the dividend upon the preferred stock, \$59,000,000, is virtually a fixed charge and ought not properly to be accounted as part of the dividends paid. To every practical intent it is a portion of the underlying liability which must be taken care of before the common stock receives any return.

This company has in the last 11 years paid the interest upon its funded debt, the dividend of 4 per cent upon its preferred stock, and the following dividends upon its common stock:

Year.	Per cent.	Year.	Per cent.
1900	4	1906	$5\frac{1}{2}$
1901	2	1907	6
1902	4	1908	6
1903	4	1909	6
1904	4	1910	6
1905	$4\frac{1}{2}$		

In addition to this it has invested in the improvement of the property from earnings over \$34,000,000.

If this company is to preserve its financial integrity upon the basis of its present capitalization and maintain its credit, it is probable that it must be allowed to earn a sufficient amount to pay its interest, its

preferred dividends, a dividend upon its common stock, and have remaining a substantial surplus. The credit of the company can not be maintained for year after year upon any other basis. We are of opinion that the sum remaining after the payment of fixed charges, including as a fixed charge the dividend upon the preferred stock, should be equivalent to between 7 and 8 per cent upon the common stock. It should have sufficient earnings so that it may pay a dividend of 5 per cent upon its common stock and carry $2\frac{1}{2}$ per cent to surplus or pay 6 per cent upon its common stock and carry $1\frac{1}{2}$ per cent to surplus. This is upon the assumption that the capitalization does not exceed its actual value.

Assuming that the Baltimore & Ohio may properly earn $7\frac{1}{2}$ per cent upon its common stock after the payment of fixed charges and taxes, can it do that upon the rates now in effect?

For the year ending June 30, 1910, the corporate income of this company after the payment of operating expenses, taxes, interest upon the funded debt, was \$16,256,000. The dividend upon its preferred stock was \$2,360,000, leaving applicable to dividends upon the common stock or surplus \$13,896,000.

This company estimates that the increase of wages would have added to its pay roll for the year 1909 \$2,000,000. The business for the year 1910 exceeded that for the year 1909 and the increase in wages would therefore be more than \$2,000,000, but, upon the other hand, the operations of 1910 involved three months during which the higher wages were actually in effect. It seems reasonable to suppose that had the increased scale of wages been in force during the entire fiscal year ending June 30, 1910, the operating expenses would have been increased by not to exceed \$2,000,000, and therefore that there would have been left from the operations of that year \$11,896,000 applicable to the common stock.

A dividend of 6 per cent upon the common stock is \$9,120,000; a dividend of 5 per cent, \$7,600,000. Had, therefore, the increased scale of wages been in effect during this year the Baltimore & Ohio might have paid upon its common stock a dividend of 6 per cent, carrying to surplus \$2,776,000, or it might have declared a dividend of 5 per cent and carried to surplus \$4,296,000. In our judgment, these net earnings would be extremely liberal to that property considering its present capital account and its past history.

It is claimed, however, that the year 1910 was abnormal and can not be taken as the measure of future years, and two reasons for this are urged by the Baltimore & Ohio. First, it is said that the cost of operation in proportion to gross income will be greater in years to come than it was this year, and, second, that the company has added to its capital account by the issue in May, 1910, of \$40,000,000 of

notes bearing interest at $4\frac{1}{2}$ per cent, which must speedily become a fixed charge upon the property and which will in the near future increase its fixed charges by \$1,800,000 annually.

If the business of subsequent years is the same as in 1910, there will be an increase in operating expenses of at least, and perhaps somewhat in excess of, \$2,000,000 owing to increased wages, but this increase has been allowed for in the figures above given, and just why should there be or just why is it probable that there will be any increase beyond that?

We have prepared the figures showing the expense per mile run of maintaining the various kinds of equipment, and we find that the expense for the year 1910 is, in case of locomotives, upon the Baltimore & Ohio, higher than for any other year in the preceding 10 years, and much above the average; that for passenger-train cars it is substantially the average; and that for freight-train cars it is substantially above the average and higher than any year with one exception in the ten.

Looking to cost of maintenance, we find that renewal of rails per train-mile in 1910 was above the average for the 10-year period and above any year in the period with three exceptions; that the cost of ties was much above the average for the period and above any year with a single exception; that renewals of ties exceeded the average and exceeded any year with two exceptions; that the cost of renewal of bridges and culverts was above the average and above any single year with one exception.

Now, in view of these facts is it reasonable to suppose that in the immediate future the cost of operation, all other things remaining equal, will substantially increase?

The ratio of operating expenses to operating revenues upon this system has steadily increased during the last 10 years, but the causes which have operated to work this increase will not be effective, certainly to the same extent, in the future. The public demand for a higher standard of railroading will tend to increase operating cost, and it may be that new economies can not be found which will altogether offset this demand. It is not, therefore, improbable that the ratio of operating expenses to total operating revenues may slightly advance as time goes on, but there is no apparent reason why, for the next few years, this ratio upon this system should exceed that of 1910 except in so far as the increase of wages will affect it.

It is urged that the seven months beginning April 1, 1910, do not show as favorable net results as the corresponding period in 1909, after all allowance has been made for increase of wages, but if an examination of the figures presented in this proceeding demonstrates anything it is that no reliable inference can be drawn even from a

single year, much less from only a few months. The average per cent of operating expenses to operating revenues in case of this company for the entire 10-year period was 66.84; for the first 5 years, 64.54; for the last 5 years, 68.56; for the year 1910, 70.09. Considering the nature of the traffic handled by this company, it does not seem probable that the figure for 1910 will be much exceeded in the near future except as affected by the wage increase.

The Baltimore & Ohio Company has issued its notes for \$40,000,000, bearing interest at 4½ per cent, and when this money is expended the interest charge will be increased by \$1,800,000 annually. Is this a reason why at this time these rates should be advanced?

We have already noted that the number of tons of freight handled by the Baltimore & Ohio and the amount received for that service in 1907 was greater than in any subsequent year. Between June 30, 1907, and June 30, 1910, that company spent apparently about \$20,000,000 upon its property. When this additional \$40,000,000 has been expended it will have laid out \$60,000,000, which is about one-seventh of its cost of construction as shown in the year 1907. This additional outlay is intended to enable that company to handle its business more economically, and thereby increase its revenue, and, further, to take care of additional business which is certain to come to it. The net revenues of the company will be increased by both these causes, although that increase may not come the same year that the money is expended, and the interest does become a fixed charge from the first. We were told that one purpose in creating a surplus was to take care of situations of this character, and to that claim we have assented. The Baltimore & Ohio in the last 11 years has carried to surplus over \$22,000,000. Why should not this surplus take care, for the time being, of this outlay. That is the purpose of a surplus, and the Baltimore & Ohio has an adequate surplus to that end.

Let it be carefully noted that this company in the year 1910 after allowing for the wage increase might have paid a dividend of 5 per cent upon its common stock, the interest on this new obligation of \$40,000,000, and still had remaining nearly \$2,500,000 surplus.

Should the cost of operation continue to increase this company may find it necessary in the future to make a general advance in its rates in order to maintain its credit upon the basis of its present capitalization, but this record does not contain any satisfactory evidence that this is now necessary.

THE PENNSYLVANIA RAILROAD COMPANY.

The Pennsylvania Railroad Company in 1901 operated 3,756 miles, single track, as compared with 3,970 miles in 1910. During the same period its all-track mileage had risen from 7,637 to 9,876, from which

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it appears that there was an increase of but 6 per cent in its operated single-track mileage, while its all-track mileage increased 29 per cent, showing an extensive development of the system.

In 1901 the funded debt was \$98,000,000; in 1910, \$293,000,000. Its capital stock in 1901 was \$152,000,000; in 1910, \$413,000,000. The mileage owned in 1901 was but 567 miles, which had increased in 1910 to 2,123 miles, and while we have been furnished with no detail as to the financial operations of this company during the decade, it would seem probable that a large part of this increase in capitalization was due to a change in the manner by which the properties making up its mileage were controlled.

Operating revenues were \$95,000,000 in 1901, and \$166,000,000 in 1910, an increase of 74.4 per cent, while net revenues during the same period increased from \$33,000,000 to \$44,000,000, only about 33 per cent.

The president of the company testified that since 1887 this company had expended upon its property from its earnings \$262,000,000, and that during the last 10 years these expenditures had been approximately \$110,000,000. The company has recently provided passenger terminal facilities in New York City at the expense of something over \$100,000,000; but we do not understand that any considerable part of the above expenditures from income has gone into this item. During this time dividends averaging at least 6 per cent per annum have been paid. The annual average market price of this stock has been from 153 to 119 per cent of par. It is plain that in the past the returns to this property from the rates in effect have been munificent, but it is said that in view of the constantly diminishing ratio between gross and net operating revenue and of the large increases in operating expenses due to these wage increases the surplus of even the Pennsylvania Railroad Company will become a vanishing quantity.

The operating income of the Pennsylvania Railroad Company for the year 1910 was \$44,000,000. Its rents and interest aggregated about \$21,000,000, leaving available to dividends and surplus from that source \$23,000,000. Dividends declared during that year amounted to nearly \$22,000,000, and a 6 per cent dividend upon the total amount of stock outstanding June 30, 1910, would be almost \$25,000,000. It would appear therefore that, having regard only to the income of this company from the operation of its property, no further increase in operating expenses could be made without impairing its dividend-paying capacity.

But the Pennsylvania Railroad Company is not merely a railroad operator—it is a great stockholding corporation. It holds, for example, the entire capital stock of the Pennsylvania Company, which

controls the Pennsylvania lines west of Pittsburg, that stock now being \$80,000,000. The total amount of its holdings of securities outside of those held in sinking and other funds, according to its report to this Commission for the year ending June 30, 1910, amounted to a par value of \$352,933,730. Upon these various securities and from other sources it had during the year 1910 an income of substantially \$17,000,000. Presumably its capitalization must to a considerable extent have been created for the purpose of acquiring these stocks and bonds, and since no detail is furnished us showing to what extent the capitalization does represent the railroad property and to what extent the other properties of this company, it is fair to consider in this connection its income from all sources in considering its ability to pay dividends upon its stock.

So considered, it appears that during the year 1910 there was approximately \$18,000,000 remaining after the payment of taxes, rents, interest, and dividends.

The Pennsylvania Railroad shows that the wage increase upon its lines east of Pittsburg would have amounted, as applied to its pay roll of 1909, to about \$7,000,000. The business handled in 1910 was greater than 1909, but there were included in the operations of that year three months in which the higher wage scale was in effect. It is probable, therefore, that this company could have paid the higher wages in the year 1910 and still have had remaining, after the payment of its dividends and all fixed charges, a surplus of at least \$11,000,000.

It is not claimed that this amount is insufficient, but we are referred to the actual results during the first seven months following April 1, 1910, the date of the wage increase, as proving that the decline in net will be much greater than that above indicated. These figures show an increase in gross of approximately \$7,000,000 for the seven months and a decrease in net of about \$5,000,000. Projected over the entire year, this would foreshadow an increase in operating revenues of about \$12,000,000 and a decrease in net revenues of over \$9,000,000. This, together with the increased dividend and interest charges for the year 1910, would reduce the surplus of that company to not much exceeding \$5,000,000.

Without expressing any opinion as to whether this company might or might not well expect to show a surplus in excess of this amount it should be repeated that no definite conclusion can be drawn from the results of a single seven months. An examination in case of this company of the expenses of operation during the last 10 years upon the train-mile basis shows that those expenses for the year 1910 were generally much above the average, usually above the highest year in the entire decade. While this indicates that the expenses of opera-

tion of this company are continually increasing, it also indicates that those of 1910 were not below normal.

While it may be true that in the future, as in the past, the ratio of operating expenses to gross income will somewhat increase, there is nothing to account for any such increase as appears in these seven months, and we should not be justified in assuming that this increase will continue until actual experience has demonstrated that fact.

The average operating ratio of this company for the 10-year period was 68.87; for the first 5 years of that period, 67.02; for the second 5 years, 70.24; for the year 1910, 70.62. The recent wage increase will add to this percentage, but except as affected by that factor no reason is apparent why in the immediate future the ratio should exceed that of the immediate past.

Nor, in view of the munificent earnings of this company in the past, and in view of the fact that its earnings upon any basis of computation must still continue substantially above its dividends and interest requirements, is there any hardship in asking that these rate increases be deferred until their necessity has been shown.

The Pennsylvania lines west of Pittsburg are financed and controlled through the Pennsylvania Company. There are two main lines between Pittsburg and Chicago, the Pittsburg, Cincinnati, Chicago & St. Louis Railway, ordinarily known as the Pan Handle, and the Pittsburg, Fort Wayne & Chicago, usually designated as the Fort Wayne route. The Pittsburg, Cincinnati, Chicago & St. Louis Company operates its own lines; the Pittsburg, Fort Wayne & Chicago is operated in connection with other railroads by the Pennsylvania Company.

THE PENNSYLVANIA COMPANY.

The Pennsylvania Company operates 1,416 miles of railway. Its operating revenues for the year 1910 were \$54,000,000; its net operating income, after the deduction of taxes, \$17,000,000, which would be equivalent to \$11,848 per mile upon its single-track mileage and \$4,623 upon its all-track mileage. These results are extremely favorable as compared with similar earnings in case of other roads similarly situated.

The Pennsylvania Company is a stockholding as well as an operating corporation. According to its report for the year 1910 it owned stocks in railway companies aggregating \$207,000,000, and railway bonds or other obligations amounting to \$47,000,000. From these sources and from other outside operations it derived an income exceeding \$13,000,000 during this year.

The capital stock of the company is now \$80,000,000; its funded debt, \$136,000,000. There is no way of determining what portion of its indebtedness or its stock was issued on account of the properties

which it owns, and therefore we are obliged to examine its entire corporate transactions.

So considered, it appears that in the year 1910 the entire corporate income of this company amounted to \$30,000,000; that its rents, interest, sinking fund charges, etc., amounted to \$17,000,000, leaving for the year \$13,000,000 applicable to dividends and other purposes.

The capital stock of the Pennsylvania Company is entirely owned by the Pennsylvania Railroad Company. For some years previous to 1910 the amount of this stock had been \$60,000,000, and it does not appear what consideration the Pennsylvania Railroad Company had paid for its stock. During the year 1910, \$20,000,000 of new stock were issued to the Pennsylvania Railroad Company without any present consideration, making the outstanding capital stock \$80,000,000. During the year 1910 a dividend of 5 per cent was paid upon \$60,000,000 of capital stock and a dividend of 3 per cent upon \$80,000,000, aggregating dividend payments of \$5,400,000, and leaving approximately \$7,600,000 by way of surplus.

The increase in wages upon the lines operated by this company for the year 1909 would have amounted to \$1,500,000. Had, therefore, the higher scale of wages been in effect during the year 1910 the Pennsylvania Company would have had, after the payment of the above dividends to its parent company, \$6,100,000 by way of surplus, an amount exceeding dividends paid.

It has been suggested by counsel that this company is enabled to make the above favorable showing by reason of its fortunate investments and not by the operation of the Pittsburg, Fort Wayne & Chicago Railroad. A sufficient answer to this suggestion would be that its investments are almost entirely in railroad bonds and railroad stocks, and that the accounts of this company are so kept that we can not determine what the net result from operation is upon the line between Pittsburg and Chicago. We may, however, inquire whether the owners of that property are receiving under their lease from the Pennsylvania Company fair compensation. There might be some propriety in saying that if the Pennsylvania Company had made an extremely favorable bargain for the use of this road it should be entitled to the benefit of its good trade.

The Pittsburg, Fort Wayne & Chicago extends from Pittsburg to Chicago and is the shortest line between those points. It was leased in 1869 to the Pennsylvania Railroad Company, which subsequently assigned its interest to the Pennsylvania Company. At that time the capital stock of the company was \$11,000,000, and this record indicates that the amount originally paid by stockholders for this stock had been very much less than par. At the date of the lease it was provided that this capital stock should be increased from \$11,000,000 to \$19,000,000, and that the lessee should pay by way

of a perpetual rent 7 per cent upon the par value of this increased stock. The lessees of this property have for the last 40 years been paying, are still paying, and must for 950 years continue to pay, 7 per cent on all and more than was invested in this railroad, and also 7 per cent on \$8,000,000 for which no present consideration was paid.

Whether we examine the Fort Wayne route either from the standpoint of the owners of the Pittsburg, Fort Wayne & Chicago Railroad or from the standpoint of the Pennsylvania Company, which now operates it, there is here, certainly, no suggestion of any necessity for increased revenues by reason of advanced wages.

THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

This company operated, during the year 1910, 1,468 miles, of which it owned 1,115. Its capitalization, June 30, 1910, was:

Funded debt.....	\$66,682,000
Preferred stock.....	27,474,000
Common stock.....	35,667,000

This would amount to a total capitalization per mile, single track, of \$116,381; all track, \$53,803, which would seem to be high for a road of this character in the region through which it extends.

Its net earnings for the year 1910 were \$7,079 per single-track mile, \$3,383 upon the all-track basis.

During the year the net result from operation after the payment of taxes amounted to something over \$10,000,000, to which must be added about \$1,000,000 derived from other sources, making a total corporate net income of \$11,000,000. Its rents, interest, and other charges were for the year about \$5,000,000, leaving \$5,854,000 available for the payment of dividends and other purposes.

During the year the company paid a dividend of 5 per cent upon its common stock and 5 per cent upon its preferred stock, leaving available for surplus \$2,873,000.

The advance in wages applied to the pay roll of this company for the year 1909 would have been slightly in excess of \$1,000,000. Had the advanced wages been in effect during that year this company would have paid its fixed charges, its dividends, and have had remaining something over \$1,000,000 surplus. Counsel for this company insists that it ought to make greater earnings than this, especially in view of the fact that for many years it paid no dividend upon its common stock and not the full dividend upon its preferred stock. When the net earnings per mile, either single track or all track, are considered, in view of the high capitalization per mile of this railroad, it is impossible not to feel that its earnings for the year 1910, even when reduced by the full amount of these wage advances, still would be extremely liberal for that property.

It should also be noted that the Pennsylvania Company owns a majority of the stock of this company. The Pan Handle is a part of the Pennsylvania system and is a competing route between Pittsburg and Chicago with the Fort Wayne route. It doubtless lies in the power of the Pennsylvania Railroad or the Pennsylvania Company to increase or diminish the earnings of these respective lines according as it diverts its traffic one way or the other.

Taking these lines west of Pittsburg as a whole or considering the Pennsylvania system, embracing lines both east and west of Pittsburg as a whole, no serious claim can be made that this system has justified, from revenue considerations, an increase in its rates of transportation. That system as now organized and capitalized will be able to pay an ample return to its stockholders and to provide for all needed enlargements or improvements without laying upon the public any increased burden in the way of transportation charges.

We come finally to a consideration of the New York Central lines.

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY.

This company owns 805 miles of single track and operates under contract 2,782 miles, making its total operated single-track mileage 3,587 miles.

The track owned has been the same for 10 years previous to 1910, but the operated mileage increased from 2,890 miles, single track, in 1901, to 3,587 in 1910.

Most of its leased roads are upon the payment of a fixed rental which does not vary with the earnings of the property leased. In some cases additional securities are to be issued by the lessor for the purpose of improving the property, but generally the New York Central makes the improvements out of its own resources, the rental being equivalent to a ground rent.

The cost of the road as shown by the reports to this Commission was \$252,000,000 in 1910; its capitalization \$491,000,000, of which \$223,000,000 is stock. The average annual market value of this stock for the last ten years has ranged from 153 to 102, being at the present time about 113.

These figures, owing to the manner in which this railroad system is created, signify but little. It is possible, however, from certain figures furnished the Commission by counsel for this defendant, to state approximately the capitalization which stands against these operated properties.

The New York Central & Hudson River Railroad Company owns a large part of the stock of the Lake Shore & Michigan Southern and the Michigan Central Railroad companies. For the purpose of acquiring and paying for this stock collateral mortgages were issued

with the stock as security, and the mortgages aggregate about \$110,000,000. This amount should therefore be subtracted from the funded debt in order to show that portion of the debt which really stands against the operated lines of the New York Central.

We are informed that the capital accounts of all the roads operated under lease amount to \$201,000,000. This sum should therefore be added to the capitalization of this company. Adjusting the capital account of the New York Central by adding the \$201,000,000 and subtracting the \$110,000,000, we find a capitalization of \$580,000,000 against a single-track mileage of 3,325 miles, or about \$174,000 per mile.

The New York Central system embraces a large amount of second, third, and fourth track, and it is therefore hardly fair to compare the capitalization in miles of single track of this system with most other systems. A fairer basis is the all-track mileage, and so computed the capitalization of these operated lines is not quite \$70,000 per mile.

It also appears that the New York Central & Hudson River Railroad owns, in addition to its holdings in the Lake Shore and the Michigan Central, railroad stocks which have cost it approximately \$16,000,000, and upon which it receives a yearly return of \$500,000.

It owns of the funded indebtedness of various railway companies \$10,700,000, from which it derives a yearly return of \$500,000.

It also owns marketable stocks in railway companies not controlled or affiliated which have cost it about \$2,250,000, and in enterprises other than railway companies which have cost it approximately \$23,700,000, from which it receives an income of \$1,000,000 annually.

If the amount of the capitalization were to be reduced by the value of these securities, the amount per mile would be less than that above stated.

The operating revenues of this company increased from \$54,000,000 in 1901 to \$101,000,000 in 1910, an increase of 85.2 per cent, while the operating income increased from \$17,000,000 in 1901 to \$23,000,000 in 1910, or 33.3 per cent. These figures have less significance, since during the decade the system was increased by the taking on of several important properties.

The net operating income of this company during the fiscal year 1910 was \$23,000,000, equivalent to \$6,414 per mile of operated mileage, single track, and \$2,662 per mile all track. This net both in all-track and single-track mileage is materially larger than for any other year in the decade. The mileage of the system has remained about stationary from 1903, during which time operating income has increased from \$19,500,000 to \$23,000,000.

Looking at the figures for the New York Central & Hudson River Railroad upon the all-track basis we find that net earnings per mile in 1903 were \$2,648, and that they equaled that figure in no subsequent year until 1910, when they were \$2,662, which indicates that the net earnings of the system in proportion to its trackage facilities were somewhat better during the year 1910 than at any other time since it began the operation of its present mileage.

It has been already noted that the greater part of the operated mileage of this system is under lease, for which a fixed rental is paid, and that upon these leased roads the New York Central & Hudson River Railroad expends out of its own funds large sums in the making of improvements, etc. We find that during the year 1910 this company paid for lease of railroads under rental \$10,000,000, and that the interest accrued upon its funded debt was \$10,000,000. About \$1,600,000 was paid to other roads for partial use of tracks and facilities, but this amount was almost exactly offset by the receipt of a corresponding sum for similar facilities, and the two items may be disregarded.

Now, deducting interest on the funded debt and rents from operating income we have a balance of only \$3,000,000 to be appropriated to the payment of dividends upon stock or the improvement of the property.

But this funded debt has been increased by the amount of \$110,000,000 to provide for the payment for the Lake Shore & Michigan Southern and the Michigan Central stocks. The interest on those bonds should therefore be deducted from the general interest charge, and so computed there would remain \$7,000,000 for dividends and surplus, to which should be added about \$2,000,000 from securities owned other than the above stocks, making a total of \$9,000,000. The present capital stock of the New York Central outstanding, according to its report to this Commission, is \$223,000,000. A dividend of 5 per cent upon this amount would exceed \$11,000,000, and a dividend of 6 per cent, \$13,000,000, from all of which it is evident that if the New York Central was confined to the income from operation of its system east of Buffalo it could not maintain the payment of dividends at a rate of even 5 per cent.

If a reason is sought for the inability of this company to show a dividend upon its stock from operation it will be found in the rentals paid and the amount of its funded debt. Its rentals are \$10,000,000, and the interest on its funded debt, disregarding its collateral mortgages, \$6,000,000, leaving as already noted but \$7,000,000 from operation.

While we do not know exactly the proportion of this funded debt which has been created for the purpose of making improvements

upon leased lines, it is known to be very considerable. The conclusion is that the leases of this company are not profitable to it, provided the New York Central lines east of Buffalo are to be considered by themselves.

Some attempt was made by the Commission to ascertain the extent to which the leases of this company might show a profit in operation, but without much success. The Boston & Albany Railroad was taken on in the year 1902, and since that time the operation of that road has shown a deficit of over \$3,000,000. That deficit was only \$500,000 in 1910, and it is stated that in the future the balance will probably be the other way. In no other case are the operations of a particular line, so far as this record discloses, kept in such a way that any reliable opinion can be formed as to the net result upon that particular portion of the system. So far as appears, these leases have been made in good faith and were supposed to be at the time when they were taken for the interest of the lessee company. If, however, this company has exercised poor judgment in the taking on of these properties at the rentals which are paid this ought not to permanently impose upon the shipping public an extravagant rate. We should indulge every reasonable presumption in favor of the good faith and the good judgment of those who put together these properties, but, certainly, in the final analysis, we can not impose upon the communities served by this system an unreasonable rate forever simply because the managers of this property at some time in the past agreed to pay more for the use of a railroad than it was or is actually worth.

It is not suggested that in making up the New York Central system this has been done. That system must be regarded as an entirety. We must consider the value of the lines east of Buffalo in connection with its lines west, and so considering we must, of course, have regard to the financial results of the system as a whole. During the year 1910 the New York Central & Hudson River Railroad received from interest on bonds and dividends on stocks owned by it \$13,000,000, and this amount must be added to the net operating income for that year out of which the payment of rent, interest, and dividends is to be made. So computing, the balance remaining for the payment of dividends would be approximately \$16,000,000. Dividends were actually declared during the year, aggregating \$11,000,000, which left remaining for surplus \$5,000,000.

The increase in wages upon the New York Central lines east of Buffalo upon the pay roll of 1909 would have amounted to \$3,600,000. Assuming, as has been done with other companies, that to have applied this increased scale for the fiscal year 1910 to the business of that year would have increased operating expenses by this amount

thus decreasing net operating income by the same amount, it would appear that this company might for the year 1910 have paid the higher wages, have declared the dividends which it did pay, with a resulting surplus of about \$1,500,000.

It is contended, however, that this surplus would be altogether too small and that even this would disappear for two reasons. First, the income of the New York Central from stocks and bonds for the year 1910 was increased nearly \$3,000,000 by the payment of an extra dividend of 6 per cent upon the stock of the Lake Shore & Michigan Southern; second, in the making of its improvements, the company has issued a large amount of stocks upon which dividends were not declared during the year 1910, but for which provision must be made in the future. It will also be found necessary to provide about \$40,000,000 additional capital in order to complete the improvements which are now under way in the city of New York and at several other points upon the line. These additions to the capital stock will involve, upon a 5 per cent basis, an increase in dividends of nearly \$4,000,000. Had these new capital charges been outstanding in the year 1910 there would have been a deficit of \$2,500,000 upon the basis of a 5 per cent dividend.

With respect to the first proposition, it may be said that the examination which we have made of the Lake Shore & Michigan Southern and to which we shall presently refer, indicates the ability of that company to pay the advanced wages upon the present basis of rates and to continue the payment of 18 per cent upon its capital stock, if its income is devoted to the payment of dividends and not expended in the improvement and extension of its lines.

With respect to the second contention, it is certainly true that this system will find it extremely difficult upon the present basis of rates to maintain the payment of dividends upon a 6 per cent basis, or even a 5 per cent basis, and to carry forward the improvements which it now has under way. In determining whether this company, upon this showing, is entitled to an advance in its rates, the character of these expenditures must be kept in mind.

It was stated that the outlays upon its passenger terminals in the city of New York would aggregate \$82,000,000, of which \$29,000,000 remain to be expended; that its expenditures in recent years upon its main line amount to \$27,000,000, and that \$4,500,000 would be required to complete the work now in progress; that upon its branch lines it had laid out within the same period \$8,000,000 and must expend \$1,500,000 more to finish the improvements already begun. It was further said that these improvements in the city of New York were being made not for the present only, but for all time.

When these improvements have been completed the New York Central will be able to handle a much larger amount of business,

both freight and passenger, than it has ever handled in the past, and to do that business upon a more economical basis. It is unfortunate for that system that these outlays to so great an amount must be made in advance of the possibility of obtaining an immediate return from the outlay itself.

Another matter was urged upon the attention of the Commission in connection with the capitalization of this company which can not be entirely ignored.

The New York Central & Hudson River Railroad Company came into existence in 1869 by a consolidation of the New York Central Railroad Company and the Hudson River Railroad Company. The evidence before us fairly shows that the capital stock of the New York Central Company contained \$9,000,000 which had been issued without the payment of any present consideration, and that the stock of the Hudson River Company had been increased in like manner by something over \$3,000,000. At the time of the consolidation the capital stock of the two companies was further increased without the payment of any present consideration by the amount of substantially \$45,000,000 issued in proportions agreed upon to the stockholders of the new company. Since that date all issues of the capital stock of this company have been for cash at par or above par, but the capital stock contains \$57,000,000 par value for which nothing was ever paid.

The dividends paid upon this capital stock for the last 40 years will probably average 6 per cent. During that time there has been actually paid in dividends to the holders of this \$57,000,000 of stock at least \$120,000,000. Had the New York Central & Hudson River Company, instead of paying these amounts to its stockholders, invested them in its property, the funded debt of that company might have been reduced by \$120,000,000, not having reference to interest. If account be taken of interest, the amount would be much larger.

This company has, therefore, as a result of this transaction a capital stock \$57,000,000 in excess of what it would be and either a funded debt or a capital stock at least \$120,000,000 greater than would be the case if the original issues of stock had never been made.

This Commission, in determining what the New York Central system shall earn, must take that system as it finds it. It can not reduce its capital stock by \$57,000,000, nor can it take from the holders of its present capital securities \$120,000,000 which have been paid in the way of dividends upon this stock. The capitalization may not to-day exceed the fair value of the property; but that company must operate its lines in competition with the Pennsylvania Railroad Company, and the rates upon both routes must confessedly be the same. In looking at the financial condition of these companies

for the purpose of determining what that rate shall be, we can not entirely close our eyes to bits of history like that above referred to.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY.

Only a brief mention need be made of this property. The mileage operated is 1,662. Its common stock authorized is \$50,000,000, and the outstanding amount slightly less. As already seen, the New York Central & Hudson River Railroad owns most of this stock, which it has pledged under a collateral trust deed, by the terms of which the amount of the capital stock of the Lake Shore Company never can be increased. There is also outstanding a small amount of stock upon which a dividend of 10 per cent is guaranteed. The funded debt in 1910 was \$159,000,000.

For the fiscal year ending June 30, 1910, the income from operation, after deducting taxes, was \$15,500,000. Its fixed charges of all kinds were \$9,000,000, leaving available for dividends and surplus \$6,500,000.

This company owns a large amount of valuable railroad stocks from which it derived in 1910 an income of almost \$10,000,000, making its total corporate income about \$25,000,000, and leaving, after the payment of all fixed charges, \$16,312,000 for dividends and surplus.

During the year the company paid a dividend of 18 per cent upon its entire capital stock and expended upon its property \$381,000, aggregating \$9,380,000, and leaving as surplus \$6,931,000.

Had the increased wage scale been in effect during the year 1910 it would have added to the operating expenses of this company \$1,500,000, and would have diminished its net by that amount. During the year 1910, therefore, the Lake Shore Company could have paid the higher wages, have declared its dividend of 18 per cent, and had remaining \$5,000,000. It might during that year have easily paid a further dividend of 6 per cent.

THE MICHIGAN CENTRAL RAILROAD COMPANY.

The mileage of this company is 1,746 miles, of which 270 miles are owned.

Its outstanding capital stock is \$18,738,000, and this amount, for the reason above stated in case of the Lake Shore Company, can never be increased. The funded debt is \$41,000,000.

During the year ending June 30, 1910, the net operating revenue of this company, after the payment of taxes, was \$8,000,000, to which should be added income from other sources in the amount of \$1,000,000, making a total corporate income of \$9,000,000. Rents, interest, and other fixed charges aggregated \$5,600,000, leaving \$3,400,000 applicable to dividends and surplus.

The company paid its regular dividend of 6 per cent, amounting to \$1,124,280. The increase in operating expenses, due to increased wages had the present scale of compensation been in effect during

the year 1910, would have reduced the net income by \$1,000,000, and this company would have had, after the payment of all its fixed charges and its dividends, \$1,200,000 remaining, an amount in excess of the dividend.

It is said that owing to certain improvements which are substantially completed the interest charges in the future will be somewhat greater than they were during the year 1910, and it is further pointed out that the result of operation for the first seven months following April 1, 1910, as compared with the corresponding seven months for 1909, indicate that operating expenses will increase by an amount greater than that due to the increased wage scale.

In answer to these suggestions it may be replied that the increase in interest charge is not considerable and that no reason appears why the ratio of operating expenses to operating revenues should materially increase beyond the amount called for by increased compensation to labor. Actual experience may demonstrate that this is not true, but we can not accept the seven months following April 1 as conclusive. While it is not suggested that the carriers have purposely increased their expenses during these seven months, in view of the bearing which the result of operation for this period may have upon our decision, still there is no reason to suppose that the year ending June 30, 1910, is not fairly representative of the cost of operation aside from these wage increases.

The Michigan Central does not present as strong a case as the Lake Shore & Michigan Southern, but that company can have no difficulty in paying these advanced wages and showing a substantial surplus over a dividend of 6 per cent upon its stock.

These three railways together—the New York Central & Hudson River, the Lake Shore & Michigan Southern, and the Michigan Central—those being the avenues over which this traffic passes between Chicago and New York, certainly make a much stronger showing for an increase in rates than the two systems previously examined. It should, however, be noted that the present necessities of this system arise mainly from the fact that it is forced to make, just at this time, large outlays which, while profitable finally, will not yield an immediate return upon a considerable part of the amount invested.

We have examined the accounts of many other lines operating in this territory and affected by these increases, but fail to find anything in the financial condition of these remaining defendants which should induce us to modify whatever conclusion is reached from an examination of the three systems selected.

Looking at these three systems as a whole, it seems plain that they have not sustained the burden which the statute casts upon them of justifying the proposed advanced rates, in so far as that justification

depends upon the necessity for greater net revenue. Supplementing our examination of these systems with our further examination of the other carriers involved, we are of the opinion that the defendants have not justified these advances from a revenue standpoint. There may be particular lines with respect to which a different conclusion should be reached, if they were considered individually, but this question has been presented to us as an entirety. Upon a view of the whole situation we hold that these defendants have not established such a need for additional revenue as justifies, at this time, an increase in these rates.

In announcing this conclusion two observations should be made:

First. It has been several times stated in the course of this discussion, and should be repeated here, that in view of the complex character of this problem, nothing but an actual test can satisfactorily determine the financial results from the operations of these several carriers. There is no evidence before us which establishes the necessity for higher rates. The probability is that increased rates will not be necessary in the future. In view of the liberal returns received by these defendants in the past 10 years, they should be required to show, with reasonable certainty, the necessity before the increase is allowed. If actual results should demonstrate that our forecast of the future is wrong, there might be ground for asking a further consideration of this subject.

But it should be further said that before any general advance can be permitted it must appear with reasonable certainty that carriers have exercised proper economy in the purchase of their supplies, in the payment of their wages, and in the general conduct of their business.

Second. We have been compelled to dispose of this case upon the evidence available. As previously noted, there is no testimony tending to show the cost of reproducing these properties. It is plain that a physical valuation would introduce into the calculation a new element which might lead to a different conclusion. The conclusion reached here extends, therefore, no further than the facts upon which it is based.

This Commission has several times urged Congress to authorize a reproductive valuation of those railroads subject to Federal jurisdiction. It is reported that certain railroad companies are making such valuations themselves, and the results may at any time be urged upon this Commission and the courts as a justification for higher rates. The interest of the public ought not to depend upon a valuation made entirely by the owners of these properties, no matter how honestly the work may be prosecuted.

The rates advanced are both class and commodity. It has been estimated that about 85 per cent of the additional revenue would

arise from the advance of class rates, and 15 per cent from the advance of commodity rates. Certain carriers suggest that even though the necessity for additional revenue be not established, the advances proposed in the class rates should be allowed, for the reason that the higher classes are too low in comparison with the lower classes, and the long-distance rates too low in comparison with the short-distance rates.

These class rates have been continuously in effect for the last thirty years. During all that time the relation between classes and the relation between communities have been substantially the same as to-day. Less complaint with respect to the adjustment of rates has been received from this territory than from any other with which this Commission has to do. During this long period business has adjusted itself to this scheme of rates, and we are not disposed, upon the mere suggestion that some better scheme might have been originally devised, to subvert the conditions which have become established.

Should the necessity for a general advance in freight rates for the purpose of providing greater revenue be established, then it would become a serious question as to whether these class rates should be selected for the increase and as to what, if any, changes should be made in the relation between the classes or between communities.

The main contention of the shippers in this proceeding was directed against the class rates. Those rates, as already noted, have been in effect for more than a quarter of a century. They form the basis of the whole rate fabric, and should not be disturbed unless the necessity for a general revision arises.

Commodity rates stand somewhat different. Every commodity tariff is in the nature of an exception to the classified list. We learn from an examination of the schedules on file that most of these commodity rates were carried under the classification when tariffs were first filed with this Commission, in 1887, and that the present commodity rates are from 10 to 25 per cent lower than the class rates then applicable. Carriers have frequent occasion to vary their commodity rates with varying conditions. While earnest objection has been made to the advance in class rates, in only three or four instances has the increase in commodity rates been especially attacked.

For these reasons we dislike to tie up, by hard and fast order, these commodity rates, and we have concluded, as to all the rates involved in this proceeding, to simply require the defendants to cancel, on or before March 10, their advanced tariffs on file and restore their former rates, which are the rates now in effect. If this requirement is not complied with the proposed rates will be suspended, the necessary findings of fact made, and the usual two-year's order issued as to all the tariffs involved.

No. 3500.

IN RE INVESTIGATION OF ADVANCES IN RATES BY CARRIERS IN WESTERN TRUNK LINE, TRANS-MISSOURI, AND ILLINOIS FREIGHT COMMITTEE TERRITORIES.

Submitted January 19, 1911. Decided February 22, 1911.

1. The principal carriers in Western Trunk Line, Trans-Missouri, and Illinois Freight Committee territories filed with the Commission tariffs increasing their rates upon some two hundred commodities in those territories, but, pending investigation involving the reasonableness of such increased rates, the carriers voluntarily suspended the effective dates of the tariffs. After full hearing and investigation of the matters involved and upon all the facts and circumstances disclosed by the record; *Held*, That the proposed rates are beyond the limitations placed by law upon the carriers, and should not become effective.
2. The distinction between the English act as to increased rates and the act to regulate commerce upon that subject is clear. The effect of the English statute was to cast upon the railway company the burden of proving that the increase of the rate was reasonable, whereas the act to regulate commerce as amended requires the carrier to show the reasonableness of the increased rate. Under the act of Parliament the carrier is called upon to justify the difference between its previously existing rate and the rate established, while under the act of Congress the carrier is called upon to prove that the new rate as a whole is reasonable.
3. The phrase "the burden of proof shall be upon the common carrier," in the Mann-Elkins Act, means that the railroad which increases its rates, if challenged, must assume to prove to this Commission that the increased rates are within the words of description and limitation used in the act; that is, that they are just and reasonable. They must satisfy the mind of this Commission of this fact.
4. It is doubtless true that in its control over the charges which the railroads make this Commission exercises a power so extensive as to justify the broadest consideration of the economic and financial effects of its orders, but the Government has not undertaken to become the directing mind in railroad management. This Commission is not a general manager of the railroads, and no matter what the revenue the carriers may receive there can be no control placed by the Commission upon its expenditure, no improvements directed, and no economies enforced.
5. The strength of the carriers' case is in these two contentions: (1) That the roads are not earning a fair return upon the value of their property; (2) that the cost of operating has increased because of increased wages. While it is true that cost of operation has increased by the amount shown as allowed to labor and addition to wages, it is also true that operating revenues have increased so as to more than absorb increased operating expenses. Moreover, cost figures furnished would indicate that under skillful management an additional tonnage may be handled under a higher wage schedule without increasing the cost of the service given.

6. It appears that these commodity rates already paid their due share of the value of the service rendered by the carriers. Many of them, in fact, are now twice as high for the haul immediately west of Chicago as corresponding rates for a similar haul immediately east of Chicago.
7. Our laws do not seek to establish dominion over private capital for any other purpose than to make sure against injustice being done the public, and thereby to make such capital itself more secure. The Commission is dealing here with a difficult problem, involving multitudinous facts and an infinite variety of modifying conditions, which make the establishment of principles and the framing of policies a matter of slow evolution. Congress has laid down a few rules. These rules the Commission is attempting to apply. It is not for the Commission to say that it represents the Government and may have a policy of its own which in any degree runs counter to the power granted to the Commission or the duty imposed upon the Commission. The railroads may not look to this tribunal to negative or modify the expressed will of the legislature. They have laid before the Commission the facts and law which would make for a justification of their course in the increasing of rates, but to the mind of the Commission their justification has not been convincing.
8. The carriers herein are requested to withdraw the proposed tariffs forthwith. If such action is not taken on or before March 10, 1911, the Commission will further suspend these rates, make appropriate finding, and issue an order directing the maintenance of the present rates for a period of two years from that date.

Frank Lyon for the Interstate Commerce Commission.

Louis D. Brandeis for Boston Chamber of Commerce.

Clifford Thorne for American National Live Stock Association, Corn Belt Meat Producers' Association, and others.

A. F. Stryker for South Omaha Live Stock Exchange.

John S. Dawson and *E. H. Hogueland* for Railroad Commission of Kansas.

Haynie & Lust for Illinois Manufacturers' Association.

T. C. Spelling for Freight Payers' League.

S. H. Cowan for American National Live Stock Association and others.

F. B. Montgomery and *John H. Atwood* for Shippers' Committee.

Francis B. James for National Industrial Traffic League & Shippers' Association.

A. F. Verson, *R. H. Small*, and *P. W. Coyle* for St. Louis Business Men's League.

Walter L. Fisher for National Dry Goods Association, Association of Western Shoe Wholesalers, and others.

Chester M. Daves for Chicago, Burlington & Quincy Railroad Company.

Walker D. Hines, *Robert Dunlap*, *T. J. Norton*, and *Gardiner Lathrop* for Atchison, Topeka & Santa Fe Railway Company.

George W. Seevers and *S. G. Leets* for Minneapolis & St. Louis Railroad Company and Iowa Central Railway Company.

Charles Donnelly for Northern Pacific Railway Company.

Burton Hanson and *William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

W. S. Horton for Illinois Central Railroad Company.

N. S. Brown and *C. H. Stinson* for Wabash Railroad Company.

W. F. Dickinson and *E. B. Peirce* for Chicago, Rock Island & Pacific Railway Company.

H. T. Ballard and *O. E. Butterfield* for Chicago, Indiana & Southern Railway Company.

J. C. Jeffery and *M. L. Olardy* for Missouri Pacific Railway Company.

J. M. Bryson and *J. W. Allen* for Missouri, Kansas & Texas Railway Company, and Missouri, Kansas & Texas Railway Company of Texas.

J. B. Payne for Chicago Great Western Railroad Company.

J. B. Sheean for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

W. L. Martin for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

F. H. Wood for St. Louis & San Francisco Railroad Company.

George Stuart Patterson for Pennsylvania Railroad Company.

S. A. Lynde, *C. C. Wright*, *Edward M. Hyzer*, and *W. A. Gardner* for Chicago & North Western Railway Company.

E. C. Lindley and *J. D. Armstrong* for Great Northern Railway Company.

L. H. Alexander and *S. H. Strawn* for Chicago & Alton Railroad Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

This proceeding, which is popularly known as the "Western Advanced Rate Case," involves the reasonableness of the rates upon some 200 commodities which the carriers west of Chicago have attempted to increase. No effort can be made to specify the individual rates, inasmuch as these number several hundred thousand, nor can the territory involved be precisely delimited, although a fair idea of its extent may be had by a survey of a map of the Burlington system which leads to most of the basing points upon which the rates concerned are fixed. More than 200 railroads operating in the states of Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, and Montana are parties to these rates. It is needless to say that neither the carriers nor the shippers have throughout this investigation attempted to deal with all the specific rates between definite points of movement upon these lines of road. This investigation has been a general one, touching large and funda-

mental principles of law and governmental policy on the one hand, and of railroad needs, plans, and policies on the other.

The rates concerned are under voluntary suspension by act of the carriers. It will be recalled that in June, 1910, the principal carriers in Western Trunk Line territory filed with the Commission tariffs increasing their rates upon a number of important articles of commerce. This action was taken through common agents. Before such rates, however, had gone into effect the Attorney General of the United States caused suit to be brought in the circuit court of the United States for the seventh circuit, alleging that such increased rates were the result of a combination and conspiracy in restraint of trade and in violation of the Sherman antitrust act. A temporary injunction having been secured, appeal was made by the carriers affected to the President of the United States, asking relief from such injunction and offering to voluntarily suspend the effectiveness of such rates pending a determination as to their reasonableness by the Interstate Commerce Commission. This appeal was made in view of a bill then pending before Congress amending the act to regulate commerce so as to vest in this Commission the power to suspend advanced rates. Such bill later became law. The carriers thereupon refiled their tariffs, suspending their effectiveness, however, until such time as the Commission could conduct the present investigation.

CONSTRUCTION OF NEW LAW.

At the threshold of this inquiry we are required to give interpretation to a new provision of the act to regulate commerce, which reads:

Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect, and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding

six months. At any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of this act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

In the last sentence of this provision it is said that the burden of proof to show that "the increased rate" or proposed rate is just and reasonable shall be upon the common carrier. It is urged with much force and an extensive citation of authority that the purpose of this provision was to limit the investigation of the Commission to the consideration of the necessity for "the increase in the rate." The purpose of Congress, it is said, was to regard all rates in effect on January 1, 1910, as the maxima, which could not be increased until it was shown that there was reason and necessity for the specific increase made. This would limit our investigation as to all rates increased since that time to the simple question, What additional expenses have attached to the movement of these articles which make proper an increase in the rate?

Such a construction of the statute is suggested by decisions of the English courts in interpreting the railway and canal act of 1894. We think, however, it is clear from the language of that statute, as well as its history, that the purpose of Congress differed from the purpose of Parliament. The English law was based on a legislative conclusion that existing rates were already sufficiently high and should not be increased excepting as transportation costs increased. Therefore, the English commission was to deal with the increase itself in the rate and not with the increased rate. This distinction is fundamental in the consideration of the laws of the two Governments.

The British Parliament in 1891 and 1892 passed a series of public acts establishing the maximum rates and charges assessable by the railway and canal companies of Great Britain and Ireland. These acts became effective upon December 31, 1892. On the day immediately following, viz, January 1, 1893, the carriers took advantage of the liberal scale of class rates provided for in these parliamentary acts, and advanced a great number of such rates which were lower than the maxima allowed and which had obtained for many years. The Railway and Canal Commission was without authority to check such increases and restore previously existing schedules. At once, therefore, it was perceived that the effect of the new legislation by Parliament under which relief had been hoped for by the shippers was to place it within the power of the carriers to increase all rates up to the high class rates fixed by parliamentary act.

It was to remedy this situation that the railway and canal traffic act of 1894 was passed providing that "where a railway company

has either alone or jointly with any other railway company or companies since the last day of December, 1892, directly or indirectly increased, or hereafter increase, directly or indirectly, any rate or charge, then, if any complaint is made that the rate or charge is unreasonable, it shall lie upon the company to prove that the increase of the rate or charge is reasonable, and for that purpose it shall not be sufficient to show that the rate or charge is within any limit fixed by an act of Parliament or by any provisional order confirmed by act of Parliament."

Lord Justice Smith gave the history of this act in the *Mansion House case*, 9 R. & C. T. Cases, p. 58, in these words:

What the legislature did was obvious. We know how, when the new maxima came in, the companies put up their rates, and as regards many of them they put them up to their maxima, and it became a question for traders and the community at large, and the legislature said, when they found this had happened, we will go back two years and draw a line along there and say that is probably the proper rate two years ago, which they had been charging before they began putting up their rates to their maxima. We will just draw a line along there, and if they have increased them since that date, then we will put upon the railway company the onus of justifying that increase. That is the English of that act of Parliament, and that I have no doubt about.

The effect of this enactment was to cast upon the railway company the burden of proving "that the increase of the rate was reasonable." The act to regulate commerce, on the other hand, requires the carrier to show the reasonableness of the increased rate. Under the act of Parliament, the carrier is called upon to justify the difference between its previously existing rate and the rate established, while under the act of Congress the carrier is called upon to prove that the new rate as a whole is reasonable. This distinction is clearly recognized in the opinion of Smith, *L. J.*, in the *Mansion House case*, 9 R. & C. T. Cases, at page 209, wherein it is said:

There was an ingenious point taken by Mr. Russell, namely, that if the rate in the whole was reasonable, nothing more was to be inquired into. That really whittled the act of 1894 down to the procedure in vogue before 1894. The question then always was whether the rate or charge was reasonable, and this act, as I read it, makes the question whether the increase was fair and reasonable.

And, again, in the same case, Kay, *L. J.*, at page 201, says:

That is where there has been an increase. If any complaint is made that the rate or charge is unreasonable it shall lie on the company to prove that the increase, not that the rate or charge, but that the increase of the rate or charge, is reasonable.

And on page 200:

What the company is bound to prove is that the increase has been reasonable, and they do not show that by merely showing that the present charge is reasonable.

There is, however, another and broader view by which we can determine the meaning of Congress. For more than 20 years Con-
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gress by express statutory declaration fixed the measure of a carrier's charge at "a just and reasonable rate." There was no check upon the initiative of the carrier. Any rate filed and published in accordance with the requirements of the law was presumed to be reasonable, and a direct proceeding of attack upon complaint was necessary to raise before this Commission the question whether or not it conformed to the standard set by the law. For a period of years the tendency of rates was downward, owing in great part to active competition between the carriers for traffic. Rates were made from day to day, and as between one shipper and another, by means of rebates from the standard published rate. This led to extreme dissatisfaction on the part of the public, and to the serious injury of the roads themselves. To meet this situation the carriers attempted to form traffic associations by which under severe penalties they were bound to each other by contract to exact the published rates. Under decisions of the Supreme Court of the United States, however, these alliances were declared unlawful, and there then followed the development of the "community of interest" plan by which, through the medium of one group of financiers or another, the carriers of a certain territory became harmonized. They no longer competed by cutting rates, because they were subject to a common control, or at least were dominated by interests that were sympathetic. There resulted an era of unexampled prosperity among the railroads as a whole. Net revenues increased, the stronger roads of higher credit absorbed the smaller; new lines were projected by the greater roads; small lines were articulated into large and connected systems; and with the development on the part of the carriers of the advantages of concord came an evident determination not only to make rates stable but if possible to bring about their increase. Accordingly, for several years past the chief body of protest coming from shippers to this Commission has been against increases in rates, and the Commission being unable to stay these increases, the shippers sought from Congress the enactment of a law by which the power would be given to this Commission, when public reasons made advisable such a course, to lay a restraining hand upon the power and initiative which hitherto had rested with the carrier without limitation or constraint.

Moreover, the Federal courts found themselves embarrassed by the appeals made to their equity powers against such increases. The courts differed upon the fundamental question of jurisdiction. In the cases where the courts assumed jurisdiction there resulted the greatest discrimination as between individual shippers and carriers, for as to some the increased rate was in effect, while as to others it was not in effect. With such a history before it Congress deemed it advisable to lodge with this Commission, which alone under the *Abilene case*, 204 U. S., 426, has power to determine the reasonable-

ness of a rate, the power to restrain for a time an increased rate until a determination can be had as to whether this rate conforms to the requirement of the statute or is but the evidence of the exercise of an arbitrary power.

The National Legislature has not fixed, as in England, a body of maximum rates. It has not been declared that the rates of January 1, 1910, are to be regarded as either above or below the old and long established standard of reasonableness. The statute contains no intimation that we are to gauge an increased rate which is suspended by any other measure than that by which we would gauge any existing rate that might be complained of. The power to suspend is ancillary to the general power of investigation, it being the mind of Congress that it was a healthier and wiser policy that there should be a reasonable exercise of such power of suspension than that either the courts should continue to inadequately deal by injunctive process with a problem the ultimate solution of which did not rest within their purview, or that the shipping public should be subjected to continuing instability of rates and consequent commercial disturbance. Moreover, the duty having been laid upon the carriers to fix reasonable rates, it was neither harsh nor oppressive to require them to make justification when such rates were to be increased.

Regarded from this point of view, we can not but conclude that Congress did not intend to say to this Commission: The rates obtaining on January 1, 1910, are maxima, and if a carrier attempts to increase them it must give the reason for the increase, showing what new burden of transportation expenses it has suffered which justifies such increase. The question before the Commission is that which would have arisen had these rates gone into effect and a formal complaint been made against them as unjust and unreasonable. We may establish the rates proposed as reasonable, one or all of them, or reduce the proposed rates. We may continue in effect the present lower rates, or we may reduce the existing rates. For "the Commission may make such order in reference to such rate * * * as would be proper in a proceeding initiated after the rate had become effective." The purpose of Congress was to give this Commission the same plenary power over increased rates that since the enactment of the Hepburn Act it has enjoyed over other rates.

BURDEN OF PROOF.

Stress is further laid upon the use of the words "*the burden of proof* shall be upon the common carrier," and we are urged to a strict interpretation of this language along lines of judicial reasoning in civil and criminal cases. This language has a common-sense meaning which does not need elucidation by citation of authority.

It must be borne in mind that this Commission is not a court of law; its function is to apply the mandatory and restrictive provisions of the act to regulate commerce to stated conditions of fact. We must regard the problems presented to us from as many stand-points as there are public interests involved. The making of a rate is in ultimate analysis the exercise of a taxing power on commerce. 73 Fed., 409. The reasonableness of a rate is to be determined by no mere mathematical calculation, though figures of cost and revenue must play a not inconsiderable part in arriving at a final judgment. Wise men may differ as to what a "just and reasonable rate" is under given conditions. The courts recognize that there is abundant play for what the present Chief Justice so admirably described as "the flexible limit of judgment which belongs to the power to make rates." 206 U. S., 26. The unrestricted power to make rates, however, should not rest in the hands of those whose tendency must be, by reason of human nature, to exact to the limit the highest return that can be procured. Reasons of public policy demand that there shall be a check placed upon a power which may be perverted and thus brought to restrict and embarrass commerce rather than increase and develop it. Every rate question, therefore, is a public question—this is the underlying principle of the act to regulate commerce and of all similar legislation controlling public utilities. An examination into the specific provisions of the act, especially into those of section 13, will make clear to the candid mind that a complaint before this Commission was not intended to be regarded in the same strict and hard light as a complaint in an action at law, but was to be regarded as an appeal to the Government against oppressive, unjust, and illegal action. A shipper may not dismiss his complaint without consent. The fact that he has no interest in the traffic concerned in his complaint does not "put him out of court." These and similar provisions indicate that the purpose of Congress in enacting the act to regulate commerce was to establish a body whose function it should be to protect the public interest and not merely regard the technical rights of an individual shipper, and in this view of the law the act has been administered by the Commission. In accepting this theory, therefore, it is not within belief that Congress intended by the language now under consideration to convert this Commission into a tribunal which should merely determine as between two sides the preponderance of evidence and base its decisions upon technical and somewhat archaic rules of evidence.

By this, however, we are not to be understood as meaning that the language of the act is without significance, or has no binding authority upon us, or that it casts no burden upon the carriers. The assumption of the law is that the railroad which increases its rates takes such action knowing that the law casts upon it—if challenge is

made either by this Commission or otherwise—the burden of justifying its action. Theirs, in the language of the learned Dean Wigmore, is “the risk of nonpersuasion.” *Wigmore on Evidence*, sec. 2485. The railroad must assume to prove to this Commission that the new and the increased rates are within the words of description and limitation used in the act; that is, that they are just and reasonable. And to say that they must prove this is to say that they must satisfy our minds of this fact.

POSITION OF THE CARRIERS.

The carriers in the present proceeding have assumed this burden. They have laid before us their financial condition, their needs, their hopes, their fears. While the justification given by no one is precisely that given by all others, the common ground for these common advances may be epitomized in the language of the leading witness for the carriers, “We need the money.”

Disregarding for the moment all other considerations, this statement that rates should be increased because the carriers need greater revenue than hitherto, sounds ominous, coming as it did in a year of unexampled railroad earnings. For it is a fact, demonstrable from the figures gathered by this Commission, that at no time in the history of American railroads have they yielded such profits or was their prospect more fair than in the fiscal year that closed June 30, 1910.

The primary impression of the Commission was that these increased rates were impelled by the “higher cost of living” to the railroads; that they were merely the outgrowth of the increased cost of supplies, fuel, and labor; but no sooner was the investigation under way than these matters were entirely subordinated. It became manifest that the purpose of the carriers was not so much to secure approval of these specific rates as to discover the mind of the Commission with respect to the policy which the carriers might in future pursue, and to secure if possible some commitment on our part as to a nation-wide policy which would give the carriers a loose rein.

No better expression of this thought can be made than is found in the opening paragraph of the brief of the Atchison, Topeka & Santa Fe Railway Company:

The case of The Atchison, Topeka & Santa Fe Railway Company is that American railway rates never have been high enough and that the public never has paid adequately for the service which it has received, that the railway company, with an extremely fortunate situation geographically, touching the Great Lakes, the Gulf of Mexico, and the Pacific Ocean, and penetrating states and territories yielding all varieties of traffic, has never, although most carefully managed, earned for its stockholders and its physical needs half the money to which it has been entitled from the public it has served; that this inadequate return has prevented it from properly keeping abreast of the development of the country or meeting the demands which the

people had a right to make if they would pay for the things demanded; that the increased cost of operation and the increase of taxes have for years been encroaching upon its earnings at a pace which all the economies that could be practiced have been insufficient to withstand; that the demands of the region which it serves call for the annual expenditure of about \$30,000,000, while under present conditions it can not procure the money; that for the reasons given it has never had the credit which it should have enjoyed as a great and constant borrower of money; and that to meet the needs of its territory henceforward by extending and improving its plant it must have more cash and higher credit, and both of these must come from higher rates.

It is doubtless true that in its control over the charges which our railroads may make this Commission exercises a power so extensive as to justify the broadest consideration of the economic and financial effects of its orders. By its decisions in the *Abilene Cotton Oil case*, *supra*, and in the *Illinois Central case*, 215 U. S. 452, the Supreme Court has erected this Commission into what has been termed "an economic court," or to give it a more commonplace definition, but one perhaps of stricter legal analogy, a select jury to pass upon the reasonableness and justness of railroad rates, rules, and practices. Within broad lines of discretion the courts regard the conclusions of the Commission on questions of fact as final. There is an appeal upon questions of law by the carriers to the courts, but unless a constitutional guaranty is violated the order of this Commission is final, provided, of course, the Commission does not overstep the jurisdictional limits placed upon it by the statute. And as to the shipper this tribunal is his one and only resort against injustice.

We must not regard too seriously, however, the effort of railroad counsel to establish this Commission *in loco parentis* toward the railroads. We must be conscious in our consideration of these rate questions of their effect upon the policy of the railroads and, ultimately, upon the welfare of the state. This country can not afford to have poor railroads, insufficiently equipped, unsubstantially built, carelessly operated. We need the best of service. Our railroad management should be the most progressive. It should have wide latitude for experiment. It should have such encouragement as would attract the imagination of both the engineer and the investor. Nevertheless, it is likewise to be remembered that the Government has not undertaken to become the directing mind in railroad management. We are not the managers of the railroads. And no matter what the revenue they may receive there can be no control placed by us upon its expenditure, no improvements directed, no economies enforced.

REGULATION V. LAISSEZ FAIRE.

The full significance of the opening sentence quoted, "that American railway rates never have been high enough and the public has never paid adequately for the service which it has received," can not be appreciated until one stops to think that for nearly seventy-five years

after the first railroad was built the American Government did not choose to exercise the power of regulating the charges of interstate railroads. These carriers, charged with a public trust, were given a free hand in the institution of their own rates until within the last four years, and they now appear asking the protection of the law to increase their rates, which under the play of economic forces they say never have been high enough. Throughout this record it appears that a literary campaign has been conducted by the use of railroad money with the manifest purpose of establishing both at home and abroad the impression that the effect of railway regulation in the United States is injurious to the American railroad. Widespread circulation has been given to the pessimistic utterances of railroad financiers who sought to fix the idea that injustice was being done our railroads by restrictive and oppressive legislation. Yet it is apparent that the carriers at present in this and similar cases are relying upon the restrictive provisions of the law which declare concessions from the published rate to be criminal and thus give stability to rates—at least as between carriers—to permit the elevation of rates to a standard which under the force of competition the carriers were unable to reach and maintain.

President Ripley, of the Santa Fe, in his testimony, which, it may be said, was the broadest and most statesmanlike of any given herein, said that in the past the rates in the territory through which his road runs had not been sufficiently high, although they had been made without any substantial regulation. Being asked if in his opinion the result of operating railroads without regulation had resulted in not making a proper return to the carriers, he answered emphatically, "I do."

"And now, that we have regulation, rates should be put upon a paying basis, is that your opinion?" he was asked.

To which his answer was, "Yes."

Could there be any position less reasonable than to cry out against restrictive legislation and in the same breath ask benefits under this legislation which never were, and admittedly never could have been, won in the open field of unlimited competition?

The attitude of the American people toward their railroads is one of friendship, not enmity. Those who are familiar with the history of European and American railroads know that no other people have been more generous in their treatment of such great enterprises than have been the American people. Not only has the Federal Government granted extensive land concessions to many roads (an area estimated by a former Attorney General of the United States to be as large as nine states the size of Pennsylvania), but state and municipal governments have by grants of land for rights of way and terminal purposes, the voting of bonds in aid of construction, and by guarantees of bond issues promoted extensive lines of road, some of which were not

justified at the time of their construction upon any reasonable basis of probable return. While there doubtless has been spasmodic and demagogic effort in various sections of our country, which made for the injury of the carriers, the trend of control and regulation as a whole has been conservative, wise, and sympathetic toward the investors in such enterprises.

If we contrast the action of the British Government toward its railroads with that of the Government of the United States toward our roads it will be manifest that we have allowed to American carriers far more play for the exercise of individual judgment and initiative than has our sister nation across the ocean. The act to regulate commerce grants to the Interstate Commerce Commission much less of power than is vested in the Canadian commission by our northern neighbor.

Whatever of doubt has arisen in the public mind respecting the value of our railroad securities has come, we are convinced, rather from the too reckless policy of stock manipulators parading under the title of financiers than from any course of governmental policy on the part of the American people.

The railroads make complaint that they no longer have a free hand. Yet the fact is that they have fared better under such control as that to which they are at present subjected than under a preceding régime of laissez faire. On July 1, 1901, there were in the United States reporting to this Commission 195,561 miles of railroad, yielding a gross operating revenue of \$1,572,960,868, or \$8,043 per mile. The net operating revenues of these roads amounted to \$577,221,171, or \$2,951 per mile. Coming forward ten years to July 1, 1910, we find that the mileage of our roads increased to 238,411 miles, which yielded for the preceding fiscal year a total gross income of \$2,818,411,419, or \$11,822 per mile. The net operating revenues reached the unparalleled figure of \$932,848,978, or \$3,913 per operated mile, an increase of 33 per cent in net per mile over the figures of but ten years ago. The advance year by year is shown in this table:

Year ended June 30—	Gross operating revenues.	Operating expenses.	Net operating revenues.	Number of miles of road oper- ated on June 30, ¹	Average per mile of road operated.		
					Gross operating revenues.	Operating expenses.	Net operating revenues.
1901.....	\$ 68	\$995,739,097	\$577,221,171	195,561.92	\$8,043	\$5,092	\$2,951
1902.....	112	1,060,829,418	629,182,794	200,154.66	8,543	5,400	3,143
1903.....	112	1,217,909,213	664,785,999	206,313.64	9,170	5,932	3,238
1904.....	100	1,293,122,933	661,237,427	212,243.20	9,308	6,068	3,240
1905.....	67	1,344,778,305	717,065,652	216,973.61	9,507	6,198	3,309
1906.....	86	1,488,060,783	817,411,253	222,340.30	10,809	6,603	4,206
1907.....	22	1,690,090,111	874,621,081	227,454.83	11,275	7,430	3,845
1908.....	53	1,708,645,641	732,967,612	230,494.02	10,563	7,413	3,150
1909.....	61	1,650,464,318	823,333,063	235,402.09	10,509	7,011	3,498
1910.....	19	1,885,562,441	932,848,978	238,411.07	11,822	7,909	3,913

¹ Includes road operated under trackage rights.

The magnitude of this increase may be appreciated when one considers the column headed "Net operating revenues." A gain of over \$109,000,000 in net revenue was made by the railroads of this country in the last year. A sum four times as great as the total paid by the United States for Alaska, the Louisiana Purchase, and Florida, combined, was added to the net profits of our carriers in one year over and above the profits of the preceding year. And the mileage operated was but 3,000 miles greater in the one year than in the other. With an increase of 38,000 miles between 1902 and 1910 the net revenues received from the operation of our railroads increased over \$300,000,000.

INCREASING DIVIDENDS.

Coming to a consideration of the return to the holders of American railroad stocks, we find a result equally gratifying. It is almost axiomatic that the investment in an American railroad is not represented by its capitalization. This generalization is subject to a few exceptions. This commission can not accept capitalization as representing either investment or value. As conservative an authority as Judge Noyes may be quoted to the effect that "Stocks are watered, anticipated profits are capitalized in advance, a large volume of securities is deemed desirable for speculative purposes. Therefore," he says, "fictitious capitalization is not an element of value. The amount of the outstanding stocks and bonds is seldom any true measure of worth. A railroad can not, by the manufacture of paper securities, impose upon the public the burden of making them pay real profits."

Bearing this thought in mind, let us glance at the following summary showing the amount and percentage of capital stock upon which dividends were declared between the years 1888 and 1910:

Years.	Per cent of stock paying dividends.	Amount of stock paying dividends.	Amount paid in dividends.	Average rate paid on dividend-paying stock.
				<i>Per cent.</i>
1910 ¹	67.20	83	50	7.47
1909 ¹	64.01	18	26	6.58
1908 ¹	65.69	40	51	8.07
1907.....	67.27	63	27	4.23
1906.....	66.54	80	74	4.08
1905.....	62.84	14	82	5.78
1904.....	57.47	19	49	4.09
1903.....	56.06	69	77	5.70
1902.....	55.40	81	66	5.56
1901.....	51.27	79	84	5.26
1900.....	45.65	94	72	5.23
1899.....	40.61	44	22	4.97
1898.....	33.74	53	89	5.29
1897.....	29.80	77	69	5.43
1896.....	29.53	75	71	5.62
1895.....	29.94	53	43	5.74
1894.....	36.57	65	26	5.40
1893.....	38.76	46	35	5.58
1892.....	39.40	37	45	5.35
1891.....	40.86	36	13	5.07
1890.....	36.24	33	13	5.45
1889.....	38.33	27	98	5.94
1888.....	38.55	49	55	5.38

¹ Does not include returns for switching and terminal companies.

This table, it will be observed, begins with the first year after the act to regulate commerce took effect. At that time but 38 per cent of the stock of American railroads was paying dividends. The amount paid was, in round figures, \$80,000,000 per year. Passing over the years of industrial panic and coming to the year 1900 we find 45 per cent of the stock paying dividends amounting to \$139,600,000. These dividends were paid upon stock having a par value of \$2,669,000,000, upon which the average rate paid was 5.23 per cent. In 1910, however, the amount of stock paying dividends had increased to nearly \$5,500,000,000, or more than double what it was in 1900; the actual amount paid in dividends had increased to \$405,000,000, or nearly three times the amount paid in 1900, and the average rate had increased over 42 per cent.

Thus we see that at the very time that the carriers in the east and in the west were taking united action to increase their rates, they were compiling their annual statements, which show from the standpoint of net revenue and of dividends upon stocks the railroads of the United States as a whole have never before prospered—not even in the heyday of 1907—as they did in 1910, which, be it remarked, was but two years removed from the financial panic of 1907–8.

A FOREIGN APPRECIATION.

It may be interesting to learn in this connection what the impartial view of European experts is as to the American railway situation. We find in the *London Statist* for December 3, 1910, an article dealing with this question, from which we extract a few pregnant and illuminating passages. The *Statist*, it may be said, is a financial authority of the highest character to which reference has repeatedly been made during the course of this hearing by railroad witnesses.

No one who acquaints himself with the condition of the American railway industry can fail to be impressed by the strong position it has now attained. This strength has come from a variety of causes, the most important of which is the enormous expansion in traffic from year to year and from decade to decade. Occasionally a crisis arises, which for the moment gives a setback to the traffic, but within a year or two the whole of the decline is regained and there is again rapid expansion. Since 1883 comprehensive data covering the whole of the railways of the United States have been published in that excellent work, *Poor's Manual*, and the information has shown that the traffic of American railways doubles every 10 years, but that until 1899 the growth in earnings was very small in proportion to the growth of traffic in consequence of the constant fall in the average rates and fares. The second cause of increased strength is the maintenance of the average freight rate, which during the last 10 years has enabled the railways to gain all the advantage of the great growth of traffic. From 1889 to 1899 an increase of 85 per cent in the ton mileage was attended by an increase of only 40 per cent in the freight earnings, whereas from 1899 to 1909 an increase of not quite 80 per cent in the ton mileage was attended by an increase of 86.5 per cent in the

freight earnings. To show the widely different conditions under which the railways are now operated from those which prevailed during the greater part of the nineties, when the railways suffered from falling rates, we give, first, a statement of the ton mileage freight receipts and average freight rate in 1899 in comparison with 1889:

Years.	Ton mileage.	Freight earnings.	Average rate per ton per mile.
1899.....	126,991,703,000	\$922,436,000	Cent. 0.726
1889.....	68,677,277,000	665,962,000	.970
Increase or decrease.....	58,314,426,000 +84.9	256,474,000 +38.5	-.244 -25.1

And, second, the comparison for the past ten years.

Years.	Ton mileage.	Freight earnings.	Average rate per ton per mile.
1909.....	227,198,933,000	\$1,720,863,000	Cent. 0.757
1899.....	126,991,703,000	922,436,000	.726
Increase.....	100,207,230,000 78.9	798,427,000 86.5	.031 4.3

This steadiness of the freight rate had undoubtedly largely contributed to the improvement in railway results. But beyond the two factors of growth of traffic and the steadiness of the freight rate the improved position is due to the wonderful economy with which the traffic is now handled. Between 1889 and 1899 the great expansion in traffic brought with it an increase in the trainload from 160 tons to 237 tons, but the growth of traffic in the past decade has been accompanied by an improvement in the average trainload from 237 tons to 385 tons. In other words, a growth of 79 per cent in the ton mileage in the past years has been attended by an increase of only 10 per cent in the train mileage.

* * * * *

Another factor which has made for economy has been the recognition that one of the essentials of a cheap system of transportation is density of traffic, and that a multiplicity of parallel lines is less advantageous to everyone than a smaller number of lines enjoying a dense traffic conveyed in heavily loaded trains. In the last twenty years the density of traffic per mile of road has more than doubled.

* * * * *

A fourth influence which has made for the increased profitableness of the industry has been the economy of capital. In the ten years to 1909 the capital expended upon road and equipment increased only 41 per cent, while the units of traffic increased 81 per cent and the gross receipts increased 88 per cent.

* * * * *

The expansion of traffic, the maintenance of the freight rate, the growth of density, the economy of operation, and the consequent saving of capital have brought great advantage to everyone concerned. In the first place, there is practically no comparison between the physical condition of the railways to-day with that of ten years ago.

The main lines of the country are now furnished with very heavy rails, are provided with strong bridges, have easy gradients and moderate curvatures, all of which render traveling much safer than it used to be. The employees have derived great advantage from the new order of things, and in the past ten years have secured much higher rates of wages and better conditions of labor. The return upon capital has also appreciably increased, and their improved credit has enabled and is enabling the railways to raise the additional capital required to deal with the growing traffic without difficulty—a matter of no small importance, having regard to the blow given to their credit in the nineties through the unsound currency legislation which so seriously affected their traffic. Furthermore—and this matter is by no means an unimportant one—the economy of capital expended upon the railways resulting from the more scientific method of operation has enabled a much larger proportion of the Nation's savings to be devoted to other industries than otherwise would have been possible, and has thereby greatly increased the productive power of the country. In 1898–9 the capital expended per unit of the traffic dealt with was 7.23 cents, whereas in 1908–9 it was only 5.64 cents, a reduction of 22 per cent.

* * * * *

Owing to the appreciable advance in the rate of wages and the higher prices of commodities, the increase in revenue expenditure has been somewhat greater in proportion than the increase in gross receipts. Nevertheless, the proportionate increase in net receipts corresponds closely to the expansion in the traffic. This will be evident from the following statement:

Growth of traffic and of earnings.

Item.	1908-9	1908-09	Increase in ten years.	
			Miles.	Per cent.
Miles of road.....	236,892	186,224	50,668	27.2
Traffic units:				
Passenger miles.....	29,896,152,000	14,859,642,000	15,036,610,000	101.0
Ton-miles.....	227,198,933,000	126,991,703,000	100,207,230,000	78.9
Gross receipts.....	\$2,513,212,000	\$1,336,096,000	\$1,177,116,000	88.1
Operating expenses ¹	\$1,751,850,000	\$912,154,000	\$839,696,000	92.1
Ratio.....	69.71	68.27	+(1.44)	.....
Net receipts.....	\$761,362,000	\$423,942,000	\$337,420,000	79.3

¹ Includes taxes.

Inasmuch as the increase of capital in the ten years was only 41.5 per cent and the increase in net receipts was 79.3 per cent, the percentage of net earnings to capital increased 27 per cent. In 1908–9 it was 5.25 per cent, and ten years previously it was 4.13 per cent. When we consider the advance in the rate of wages and in the cost of commodities, such a result bears eloquent testimony to the great skill and economy exercised in dealing with the traffic.

* * * * *

After the expansion in the traffic and earnings of last year, the further increase this year is at a diminished rate, and it is probable that for the twelve months to June next the increase in traffic and in gross receipts will be below the normal rate of expansion. Nevertheless, in view of the good crops it will probably be appreciable. On the other hand, the expenditure of the current year may not show any considerable increase, notwithstanding the advance in the rate of wages. In the winter months of last year large sums had to be spent by most of the roads in repairing the damage caused by

floods and by severe weather, and, unless the railways are again unfortunate, comparison with these abnormal expenses will enable large sums to be saved in the next few months. On the whole, we anticipate that the profits of the railway companies this year will be maintained at about last year's high level, and that the large profits will cause some of the companies to raise their dividends above the moderate rates they are now paying out of their great profits.

The sentence last quoted may be taken to reveal the attitude of the European stockholder who asks that he may have a larger share out of the "great profits" which the American railroads are making. This presents the awkward dilemma in which the American railroad man is placed. His European shareholders insist upon larger dividends because of increasing profits, while he is demanding higher rates in order that his credit at home and abroad may be sustained.

PROFITS AND DIVIDENDS OF WESTERN CARRIERS.

Before proceeding further to a consideration of other aspects of the general situation it becomes peculiarly pertinent at this point to discover what has been the financial fortune of the western carriers specifically involved in this proceeding. While many carriers are named as defendants herein, they are in the greater part extremely small local lines. The territory is served by a few large systems, which we will deal with as typical, though some are much stronger than others. It may here be remarked that the burden of supporting the increase in rates herein has been assumed largely by the Santa Fe and Burlington roads, with which we shall chiefly deal. To these lines we have here added the figures for the Chicago & North Western Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago & Alton Railroad Company.

In 1901 these six roads paid dividends of \$26,000,000. Ten years later these roads paid more than twice that amount in dividends. At the close of the first half of the decade they were paying in dividends over \$35,000,000, and at the close of the second half of the decade they were paying \$20,000,000 in addition. These are the figures as to dividends, but they do not represent the net profits—and net profits, it is not to be forgotten, are the profits of the stockholders—all operating expenses (maintenance charges included) having been deducted, also taxes and all interest on bonded debt. After paying dividends of \$43,000,000 in 1909, there remained a stockholders' profit of \$25,000,000. The dividends next year were raised to \$55,000,000 and this left but a balance of \$14,000,000. Here, for sake of convenience, we insert the table from which these figures are taken.

Statement showing aggregate figures for Atchison, Topeka & Santa Fe Railway Co., Chicago, Burlington & Quincy Railroad Co., Chicago & North Western Railway Co., Chicago, Milwaukee & St. Paul Railway Co., Chicago, Rock Island & Pacific Railway Co., Chicago & Alton Railroad Co.

Year.	Net profits.		Dividends declared.	Balance (net profits less dividends declared).		Maintenance of way and structures. ¹		Maintenance of equipment. ¹
1910.....	\$6	35	\$55,504,021	\$1	14	\$6	08	\$54,838,502
1909.....	6	54	43,620,800	2	45	4	02	43,343,575
1908.....	5	59	50,161,464		95	4	40	46,642,358
1907.....	7	32	40,633,608	3	64	5	07	50,125,000
1906.....	6	29	40,162,542	2	87	4	08	45,361,969
1905.....	5	10	35,820,532	1	79	3	06	37,853,232
1904.....	5	08	37,075,360	1	28	3	18	32,214,412
1903.....	5	07	35,674,131	2	76	3	07	28,105,426
1902.....	5	54	31,699,102	2	62	3	50	23,788,966
1901.....	4	06	28,196,665	2	41	3	28	21,861,741
Total for 10 years.....	615,698,674		396,538,294	219,155,880		427,979,915		388,681,980

¹ These amounts are included in operating expenses and deducted from revenue before net profits are figured.

While the balance was but \$14,000,000 in 1910, it is worth while passing the eye along the same line, and there it will be seen that maintenance charges in 1910 were nearly \$115,000,000, as against \$18,000,000 less the preceding year. If maintenance charges had in the last year been no greater than they were in 1909 the balance would have been over \$32,000,000. These maintenance totals are interesting as indicating the policy of these roads—to keep equipment, track, and structures up to perfect condition out of operating revenues before the net profits are found. The traffic of the year assumes this burden. It is in evidence that the Santa Fe keeps its equipment out of current revenue up to a perfect condition—as good as new. And it was Mr. Ripley's testimony that he improved his road each year out of the operating revenues of the year, one illustration given by himself being the building of a cement tube throughout the longest tunnel on his road at an expense of \$700,000, entirely out of maintenance.

Going somewhat into detail as to the two typical roads (see Appendix A, at the close of this opinion for tabulated statements of the several carriers), we find that the Santa Fe has paid a dividend of 5 per cent upon its preferred stock for the past 10 years and earned an average of nearly 9 per cent upon its common stock, and this after paying interest upon bonds, which at present average \$44,000 a single-track mile. Upon a capitalization of \$84,000 per mile the Santa Fe earns the following return: Approximately 4 per cent upon \$44,000 bonded debt, 5 per cent upon \$16,000 preferred stock, and 9 per cent

on \$24,000 common stock.¹ The Santa Fe, however, has reserved a considerable proportion of each year's income, which might have been applied on common stock. Since the reorganization in 1897, there have been but two years when no dividend was paid on preferred. The total amount paid in dividends since the reorganization of the road in 1897 is over \$116,000,000. And in addition to these dividends stockholders have received various "rights" on new stock.

From a glance at the income statement of the Burlington it will be seen that its net profits in 1910, after deducting all operating expenses, taxes, and fixed charges, amounted to nearly \$14,000,000 (which allowed an 8-per-cent dividend upon its stock and a balance, or surplus, of \$5,108,000), or the equivalent of 12 per cent on the common stock. There has not been a year in the past 10 when it did not have net profits sufficient to pay more than 7½ per cent upon its capital stock of \$110,000,000, and since 1903 these have been the percentages earned on capital stock outstanding for the years named: 1903, 13.40 per cent; 1904, 12.32 per cent; 1905, 13.31 per cent; 1906, 12.40 per cent; 1907, 12.49 per cent; 1908, 10.83 per cent; 1909, 11.77 per cent; 1910, 12.61 per cent. The average for the past 10 years is 11.68 per cent.

To go still further back, we find that during the 16 years 1855–1870 the Burlington paid dividends averaging 12.33 per cent per annum; 10½ years, May 1, 1870, to December 31, 1880, averaging 11.08 per cent per annum; 1881–1890, 7 per cent per annum; January 1, 1891, to June 30, 1900, 4.8 per cent per annum; 1901–1910, 7.725 per cent per annum. The total amount of dividends paid during the period of 56 years is \$220,345,646.70.

MONEY BORROWED.

We have heard much throughout this inquiry as to the maintenance of the credit of the carrier. This credit is based upon the faith

¹ Since the issuance of this report our attention has been directed to the fact that the capitalization per mile of road as given above may be misleading in that it is the result of dividing the total capitalization of the system by the mileage of the Santa Fe Company proper. The system mileage on June 30, 1910, was 10,406.61 miles, as against 6,837.05 miles for the company. It is now said that the true capitalization per single-track mile for the system is \$56,353. Upon such mileage the Santa Fe system in the year 1910 earned 4 per cent on a bonded indebtedness of \$29,467 per mile, 5 per cent on \$10,974 per mile of preferred stock, and 9 per cent on \$15,912 per mile of common stock. It will thus be seen that the percentages paid upon the system are not changed by this manner of computation.

The total system capitalization of \$580,000,000 was in part issued and applied to the acquirement of subsidiary lines. An effort was made by the Commission at the hearing to separate the investment in these subsidiary companies from the investment in the main line, but this we were told by the general auditor of the company could not be done. His testimony was as follows: "These subsidiary companies that form a part of the regular company come to us, and there is no way of telling how much of those companies is represented in our investment. For instance, we issued securities to cover the entire investment in the new company, the new Atchison, Topeka & Santa Fe Railway Company; they issued securities to cover its entire investment in the Gulf, Colorado, in the Southern Kansas & Texas, in the Sonora, and the Southern California, and the R. G. & E. P., and so forth. These lines are simply one general total in our investment, and there is no way of separating the investment in these properties from the investment in the main line."

of those having money to loan who must be made to feel that their investment is safe and its return certain, or as reasonably certain as the hazards of the best-considered enterprise will permit. Now, there surely is no better way to measure the faith of a people in an enterprise than by discovering how large a volume of their savings they have been willing to invest in it. Let us for a moment, therefore, regard the amounts which the railroads have secured from the investing public in bonds alone in these ten years.

The reports of the railroads of the United States show that while in 1899 the total bonded debt was \$5,518,943,172, upon which interest amounting to \$251,158,087 was paid, in 1909 the total bonded indebtedness had increased to \$9,801,590,390, and the amount of interest paid to \$382,675,101, while in this time (ten years, 1899-1909) the amount of road had increased, including *all track*, from 244,820 miles to 332,955 miles. Or, otherwise stated, the railroads of the United States in ten years floated mortgage bonds upon their property to the extent of upward of four and a quarter billions of dollars. Their mortgage indebtedness increased 77 per cent, while their mileage increased but 36 per cent, and on this mortgage debt interest was paid in 1899 at the rate of 4.55 per cent, while in 1909 it was paid at the rate of 3.90 per cent.

These figures are incomprehensible. Our railroads borrowed upon mortgage in one decade more than twice as much as the national debt at the close of the civil war. "Give us reason for hope," is the impassioned cry of one of the railroad counsel. "We wish to know that we may have the funds wherewith to supply the transportation needs of our people." To this there is apparently no answer unless one is suggested by these figures. Bismarck thought to utterly destroy France as a rival in European politics by exacting from that thrifty nation a tribute of less than one-fourth the amount which has been loaned to a comparatively limited group of American railroad financiers in the past ten years.

And with an increasing rate of dividends to the stockholder and an increasing net revenue the rate of interest paid on these loans has declined. In other words, the investor in railroad bonds was willing throughout these ten years past to receive less for his money on a railroad bond than he was when there were fewer railroads to serve this great continent and less regulation.

The thought suggests itself from a reading of the position of the Santa Fe, which we have quoted (and this extract is taken only as typical of much that appears in nearly all the briefs of the carriers), that possibly the western roads, with which we are here particularly concerned, have not had their share of these great advances of capital. Immediately west of Chicago lies the prairie country, where the corn and wheat, the cattle and hogs, which supply in so considerable a

part the needs of America are raised. This was a country already well developed in transportation facilities when the new century dawned, so that there was less room for extension within this territory than there was in the mountain country beyond. Nevertheless, we find six alone of these roads to have borrowed over \$450,000,000—more than the United States Government estimates will be necessary to build the Panama Canal. In ten years these roads have added to their funded debt over 60 per cent of the amount they owed at the beginning of the decade.

Comparative statement of funded debt.

Name of road.	1901	1910
Atchison, Topeka & Santa Fe.....	\$199,035,710	\$300,610,983
Chicago & Alton.....	22,000,000	79,550,500
Chicago & North Western.....	149,329,000	204,959,900
Chicago, Burlington & Quincy.....	147,204,300	209,856,000
Chicago, Milwaukee & St. Paul.....	126,941,500	177,534,500
Chicago, Rock Island & Pacific.....	68,081,000	202,351,000
Total.....	712,591,510	1,174,861,983

When we compare the increase in the total capitalization (stocks and bonds) of these same six roads alone, we find that in stock and bonds there is an increase of over \$759,000,000.

Name of road.	1901	1910
Atchison, Topeka & Santa Fe.....	\$432,521,710	\$580,373,513
Chicago & Alton.....	61,086,800	123,209,800
Chicago & North Western.....	215,556,321	359,813,486
Chicago, Burlington & Quincy.....	257,782,000	320,696,100
Chicago, Milwaukee & St. Paul.....	227,421,700	410,157,600
Chicago, Rock Island & Pacific.....	118,081,000	277,351,000
Total.....	1,812,449,531	2,071,600,499

The increase in the funded debt of the Santa Fe in the period of five years 1906–1910 over the five years preceding was 28 per cent, while the increase in capital stock for the same period was but 1 per cent. The funded debt of the Alton increased for the last five years over the preceding five years 39 per cent, capital stock 5 per cent. The North Western, on the other hand, increased its funded debt for the same period but 18 per cent, while its capital stock increased 75 per cent. This stock, however, was distributed among the existing shareholders at par, although it commanded in the market as much as 20 per cent above par. The funded debt of the Burlington increased 17 per cent, while its capital stock increased one-tenth of 1 per cent. The funded debt of the Milwaukee increased 11 per cent in one five-year period over the other, while its capital stock increased 59 per cent. The comment as to the North Western also applies as to the distribution of the Milwaukee capital stock. The Rock Island increased its

funded debt in the one five-year period over the other 67 per cent, and its capital stock but 12 per cent. The latter has remained stationary for six years owing to the fact that it is all owned by a holding company.

The Santa Fe alone increased its total capitalization during the ten-year period by \$150,000,000. The North Western increased by almost an equal amount, or \$144,000,000; the Milwaukee by nearly \$200,000,000. These figures evidence a confidence on the part of the investing public in the future of these carriers which is a complete answer to the fear that underlies their appeal to this Commission for the announcement of a policy that will strengthen their credit.

That there has been no fixed or uniform relation between the issuance of stocks and bonds is shown by the following statement:

Name of road.	Single track operated, mileage.	Total capital.	Stock.	Funded debt.
Atchison, Topeka & Santa Fe	7,459	\$580,000,000	\$280,000,000	\$300,000,000
Chicago & Alton.....	998	123,000,000	44,000,000	79,000,000
Chicago & North Western	7,629	360,000,000	155,000,000	205,000,000
Chicago, Burlington & Quincy	9,023	320,000,000	110,000,000	210,000,000
Chicago, Milwaukee & St. Paul ¹	8,974	410,000,000	232,000,000	178,000,000
Chicago, Rock Island & Pacific.....	7,400	277,000,000	75,000,000	202,000,000
Total.....	41,483	2,070,000,000	896,000,000	1,174,000,000

¹ Including Puget Sound.

That this capitalization has no relation to income is at once observable from this table, which shows the capitalization per mile when compared with the net revenue per mile:

Comparison of capitalization per mile of road with operating income per mile on a single-track basis (line basis) operated, after all expenses have been paid.

Name of road.	Capital per mile owned	Operating income, net, per mile.
Atchison, Topeka & Santa Fe.....	\$84,636	\$3,607
Chicago, Burlington & Quincy.....	36,338	2,408
Chicago & North Western.....	47,933	2,488
Chicago, Milwaukee & St. Paul.....	138,820	2,361
Chicago, Rock Island & Pacific.....	53,204	1,873
Iowa Central.....	57,481	1,100
Minneapolis & St. Louis.....	56,959	1,832
Wabash.....	106,289	2,969
Chicago & Alton.....	125,629	4,262

¹ Based on amount which excludes securities issued on account of Chicago, Milwaukee & Puget Sound.

The greater part of these stocks and bonds were uttered at a time when rates were much less fixed and stable than they are to-day—when operating revenues were not so great and return upon either stocks or bonds less assured than they are at present. What reason, therefore, is there to fear that needed capital may not be secured in

the future? This record offers no answer to that question. The price of bonds, to be sure, has fallen, but it would appear that the investing public regards the bonds of these railroads with greater favor than the bonds of most of the largest and strongest municipalities in the country. Whether due to the increase in the volume of money or not, the fact remains that the highest class of securities fail now to command such prices as formerly. The public asks a higher return for the money which it loans. How long this condition will obtain no one can say, but that money will be abundant for all legitimate investments is hardly to be denied. We have this on no less an authority than the Commercial and Financial Chronicle, which, in its issue of January 21, 1911, says:

America does not need to levy upon Europe's supply of gold at this juncture. * * * Money is well-nigh unlendable in New York without aggravating the weakness by augmenting the supply from foreign sources. Interest rates here are distinctly below the London discount rates of $3\frac{1}{2}$ and $3\frac{7}{8}$ per cent. Short-term loans are procurable at 3 per cent, six-months funds at $3\frac{1}{2}$ per cent, and twelve-months facilities at 4 and $4\frac{1}{2}$ per cent. The ascertained movements of currency point to a fairly large inflow from the interior this week, as well as a gain from the local subtreasury, so that to-day's bank statements may be again favorable. The actual returns issued last Saturday disclosed an increase in deposits of no less than \$44,065,200 and a net addition to the surplus reserve of \$15,112,700, bringing the total up to \$33,861,425. The expansion in loans was half the increase in deposits, being only \$18,273,800, or materially less than the cash gain, \$26,129,000.

These statements are made as corollary to the announcement that precautions are being taken, somewhat unnecessarily, it appears to New York bankers, to prevent a possible gold outflow from London to New York. New York, the financial center of the United States, does not need this gold. It has more than it can use. Here, however, is another view from the same source:

The almost general belief that funds will continue to accumulate in New York at a rate certain to cause quotations for loans to decline well below the level now prevailing is not shared by certain influential bankers in the Wall Street district. These bankers are refusing to release funds on the current terms, especially for long periods. Their contention is that the demands for new capital during the next few months will be so extensive, and that the yield offered will be so generous, that surplus supplies of money will be used up, and that thereafter interest rates will advance. In the meanwhile rather than lend on collateral at 3 and $3\frac{1}{2}$ per cent those who take this stand are seeking employment for their resources in either short-term notes or high-class bonds enjoying an active market and returning better than 4 per cent. Looking further ahead, it is argued that should the decision in the railroad freight hearing and the Supreme Court's ruling on the Sherman law be even moderately satisfactory to the business world trade will recover rapidly and radically.

Reading these passages together it is not difficult to discern how slight a part the stability of our railroad securities has to play in the price of stocks or bonds. There is an abundance of money—so much, in fact, that more can not be absorbed. Rates of interest are extremely low. On the other hand, some speculators in the value

of money are preparing for an abnormal demand when the Supreme Court and the Interstate Commerce Commission have decided pending cases.

It is undoubtedly a matter of public importance that the credit of our railroads shall be first class. They should be able to borrow money at rates as low as the most stable of our greatest industries and the most solvent of our municipalities—and this they are able to do. The railroad is interested in getting its money as cheaply as possible, while the stock and bond buyer is interested in securing as high a rate as possible for the money which he invests or loans. Here is a conflict of interest which is adjusted in the competitive money markets of the world. So far as the bond buyer is concerned it is evident that no matter to what elevation rates might be raised it would not increase by the fraction of a cent the interest which he would receive. It is not to be imagined that an increase in railroad revenues will increase the rate of interest upon railroad bonds. The one interest, therefore, that the bondholder has, or the bond buyer has, is in the stability of his security. The stockholder, on the other hand, who makes a direct investment has an interest in railroad revenue because his interest in the property is necessarily speculative, the volume of the dividend being determinable, to some degree at least, by the amount of the revenue available for distribution among stockholders. While the rate of interest which the carrier must pay is to be determined by the character of the security it gives, we know that this security depends not alone upon the revenue of the carrier, but upon the character of its management and the prospect it enjoys. The character of its management is shown in the use to which it puts the revenue which it receives—its economies, its foresight, whether or no it attempts to deal fairly with its stockholders in the division of income or absorbs to itself in the improvement of the property too great a share of income. It is also shown by the policy which it adopts as to capitalization. Railroad financiers themselves who but a short time ago were so reckless in the issuance of stock, which, as they admitted, had no immediate value but was a capitalization of the future, are taking a position that is more responsive to the best public sentiment and more appreciative of the advantages of conservative financiering. There are in this case evidences of a recklessness in the utterance of certain stocks which will remain for a long period a bar sinister upon the escutcheon of the property.

CREDIT AND SURPLUS.

We come next to a consideration of surplus. This, it is said, should be large as a foundation for credit, a guarantee fund against disaster and a reserve out of which improvements and extensions may be made.

It is to be borne in mind that it has been American railroad policy to maintain the property fully, in a constantly improved condition, both as to roadbed and equipment, out of current revenue. The carriers, even under the rules of the Commission obtaining only during the last two or three years, are given the widest latitude as to the charges that shall be made against the maintenance accounts. Notwithstanding the unquestioned liberality of the policy of the railroads toward themselves in charging maintenance expenditures to operating expenses, the carriers of the United States have accumulated unappropriated surplus amounting to \$800,642,923, whereas in 1899 this surplus, as given in the books of the carriers, was but \$194,106,367. In ten years, with an increasing rate of dividend and increasing maintenance charges and a vastly increased fixed charge for interest, these carriers had accumulated a surplus of \$606,536,556, or an increase of 312 per cent of 1899, while the mileage had increased only 36 per cent. Is it too much to say that such facts are a complete answer to those who persistently "view with alarm" the outlook for American railroads?

Such a vast sum held in the surplus accounts of the carriers does not represent cash on hand, as is popularly supposed. Very little of this amount is in that form. Much of it has been expended in one way or another in improvements placed upon the property out of the income of the carrier. It does represent, however, an amount which the roads have neither been compelled to expend in operations nor in payment of interest, and have not chosen to distribute to the stockholders in the form of dividends.

In the last analysis a surplus is a matter of bookkeeping. "Surplus," as used in railway accounting, means simply the bookkeeping balance of the "Profit and loss" account, which, presuming all other values carried on the books to be true, indicates the excess of assets over liabilities. It is whatever the railroad management chooses to make it, and depends upon the nature of a railroad's capitalization, the policy of the road with respect to charges for maintenance, the volume of the dividend, and other factors entirely within the directors' control. Rates might be doubled in this territory and leave the surpluses of the carriers where they are to-day. The amount of operating revenue is not determinative of the amount which the carrier will set aside as a reserve for depreciation of the plant, for a sinking fund to meet coming obligations, or upon which to draw for improvements.

The railroads in this proceeding have failed to show that their credit has suffered for lack of surplus. It may well be that with a larger surplus bonds or stocks might have sold at a higher figure, but this is problematical, and, furthermore, it may be asked, Is it wise or

necessary to accumulate a surplus much more rapidly than at the rate of nearly 200 per cent in ten years? These are the figures:

Name of road.	Total surplus at the beginning of 1901.	Total surplus at the close of 1910.
Atchison, Topeka & Santa Fe.....	\$9,994,620	\$20,231,803
Chicago & Alton.....	1,132,085	258,522
Chicago & North Western.....	6,915,100	32,178,932
Chicago, Burlington & Quincy.....	24,763,722	59,729,751
Chicago, Milwaukee & St. Paul.....	14,887,254	50,546,541
Chicago, Rock Island & Pacific.....	4,858,493	15,019,816
	62,551,274	177,963,365

A glance at this table will show that the total surplus of these six roads, operating at present an aggregate mileage, single track, of 40,000 miles, has grown from \$63,000,000 at the beginning of 1901 to \$180,000,000 in 1910. If we take the unappropriated surplus alone and make comparison with the same fund for all the roads in the United States for 1909, we find that these six roads, having one-sixth of the mileage of the country, have between one-fifth and one-quarter of the total unappropriated surplus.

The actual surplus, however, for these six roads is shown in the following statement, for herein is given the amount over and above all operating expenses, fixed charges, and dividends which these roads accumulated during these 10 years, including the amounts which they have reinvested in the property as additions and betterments, or have reserved and set aside in special funds:

Name of road.	Total surplus at the beginning of 1901.	Surplus accumulated during the 10 years ending June 30, 1910.	Total surplus at the end of 1910.
Atchison, Topeka & Santa Fe.....	\$9,994,620	\$50,525,333	\$60,519,953
Chicago & Alton.....	1,132,085	649,363	482,722
Chicago & North Western.....	6,915,100	55,995,832	62,910,932
Chicago, Burlington & Quincy.....	24,763,722	52,134,709	76,898,431
Chicago, Milwaukee & St. Paul.....	14,887,254	35,659,287	50,546,541
Chicago, Rock Island & Pacific.....	4,858,493	10,384,623	15,243,116
	62,551,274	204,050,421	266,601,695

There is much persuasiveness in the argument that a surplus shall be permitted to accumulate which shall be in a sense a public fund out of which the carrier may create facilities which will produce more efficient and satisfactory service without adding to the liability of the road and without creating an additional value in the road which may call for a greater return in rates. This suggestion has much that is fundamental in it. It looks toward an adjustment between the public and the carriers that will be fair and profitable to both. It is an expression of an appreciation by a public service corporation

of the philosophy upon which public regulation of carriers is based. Moreover, some method must be found under which a carrier by its own efficiency of management shall profit. A premium must be put upon efficiency in the operation of the American railroad. Rates can not be increased with each new demand of labor, or because of wasteful, corrupt, or indifferent management. Nor should rates be reduced with each succeeding improvement in method. Society should not take from the wisely managed railroad the benefits which flow from the foresight, skill, and planned cooperation of its working force. We may ruin our railroads by permitting them to impose each new burden of obligation upon the shipper. And we can make no less sure of their economic destruction by taking from them what is theirs by right of efficiency of operation—the elimination of false motion, of unneeded effort, and the conservation of labor and materials. The standard of rates must be so high that the needed carrier which serves its public with honesty and reasonable effort may live. And yet rates should be still so much below the *possible* maximum as to give high and exceptional reward to the especially capable management, the well-coordinated force and plant. This is the ideal, unrealizable perhaps, but it points the way.

In some parts of our own country as well as abroad machinery has been devised by which the return to capital invested in a public utility is increased automatically with a decrease in rates. We know of no instance in which this has been applied to a railroad, but it has been successfully applied with respect to so simple a matter as a corporation supplying artificial gas. No doubt it could be applied to a street railway. But whether it is applicable to the intensely intricate business of a commercial railroad is a matter of serious doubt.

It would appear that one of the problems of the future in railroad regulation is to discover the machinery by which the railroad may justly take to itself an adequate return for the investment which its stockholders have made and share with the community the advantages of the surplus which it creates. This can not be done, however, by the mere assertion of this Commission that it will adopt a certain policy toward the carriers; that, for instance, we would regard with favor a certain return upon investment and an additional return out of rates to go into surplus which would remain uncanceled. We are without control over capitalization. It is not within our function to place limitations upon the purposes for which stocks or bonds may be issued, nor to designate what property they shall represent. Furthermore, the establishment of such policy necessarily implies a control over the use of the operating revenues of the carriers which would be a more radical extension of governmental control than any heretofore suggested. Manifestly considerations of this character are addressed to a body having legislative power. Any attempt on the

part of the Commission to declare and carry out such a policy would, we take it, be subjected immediately to successful attack before the courts. Since we can not declare that accumulated surplus shall not be capitalized, the adoption of such a plan rests entirely with the carriers, and the volume of such surplus as a public trust fund depends entirely upon their own policy and good faith.

We take it that this was the policy Mr. Ripley advocated. He thought that the stock of the Santa Fe should pay 6 per cent in order to make it reasonably attractive and keep up the credit of the road, and that another 6 per cent should go into improvements of a non-revenue producing character, such as track elevation, passenger stations, and safety appliances, which should not be capitalized. Mr. Ripley's statement was made upon the assumption that the stock of the Santa Fe road represented investment.

Let us apply this theory to some of the present carriers to the end that we may determine how practicable it would be to pay 6 per cent upon the stock to the stockholders and to leave 6 per cent to the carrier. The Chicago & Alton is capitalized for \$123,000,000, which is divided: Capital stock, \$44,000,000; funded debt, \$79,000,000. The Chicago & North Western is capitalized for \$360,000,000, which is divided: Capital stock, \$155,000,000; funded debt, \$205,000,000. The Chicago, Burlington & Quincy is capitalized for \$320,000,000, divided: Capital stock, \$110,000,000; funded debt, \$210,000,000.

We have proceeded sufficiently far, perhaps, to make clear that such a theory can not be generally applied because of the wide divergence in the theory of capitalization which has obtained among the different carriers. . To allow all carriers to pay interest on their funded debt, 6 per cent upon their capital stock and allow 6 per cent in addition to the carrier for betterments, would work out the greatest discrimination as between them. A road which has a small capital stock issue in comparison with its total capitalization, and which was largely built out of money raised by bond issues, would yield to its stockholders under such a distribution but a small return, and the carrier itself would have for betterments a small amount; whereas another railroad, in which the stockholders had invested their own money, would yield them a very large return upon their stock and an equally great return of public funds to be reinvested in the property in permanent improvements. If capitalization represented investment, the actual introduction of money into the property, and bonds and stocks were issued and sold at par and in a fixed ratio, this theory would not be open to the objection here made. Under conditions obtaining at present, however, no such standard can be applied, because there is no relation between capital and value and no relation between stocks representing value and bonds representing value. The application of this theory would lead to the

conclusion that the Wabash, which has paid no dividends in ten years, would be entitled to no surplus fund from which improvements should be made.

This principle is often referred to as being that applied by the Pennsylvania Railroad to the conduct of its own affairs, but the inapplicability of such a standard is revealed by recent changes in the capitalization of the Pennsylvania road itself. In 1910 it reduced its bond issue by \$80,000,000 and increased its stock issue by \$100,000,000. Therefore in the year 1909 the road would not have been entitled to receive from the public \$6,000,000 in interest to go into public improvements which in 1910 it would have been entitled to; and this entirely because the holders of convertible bonds have exercised their option and become partners in the road, instead of creditors of it. The amount to be contributed by the public for so-called nonrevenue-producing improvements is evidently not to be determined by the transient advisability of either issuing stocks or bonds.

Insistent appeal is made that a line of policy shall be laid down in this case which will justify existing roads in extending their lines into territory now insufficiently supplied. This may be done, the carriers say, by allowing them to amass large surpluses which will so establish their credit that money may be had at the lowest possible rate for such development. No such projected enterprises in the concrete have been brought to our attention, and doubt may well be felt as to whether the shipper of to-day should bear a burden in the rate that he pays for the purpose of enabling an existing carrier to borrow money at a lower rate than would be extended to another promoter invading the same territory. At any rate, no policy could be adopted more certain to insure to existing lines a monopoly of all possible opportunity for railroad extension than one which would make railroad building possible only to those who could guarantee returns upon securities out of road already constructed. This, however, we do not take to be the prime function of a railroad surplus.

A railroad is justified no doubt in maintaining a surplus which will insure dividends to its stockholders during lean years; and it may accumulate through the years funds to meet obsolescence in plant, unless this charge is taken care of in maintenance. The one other legitimate end for which a surplus may in reason be accumulated is to supply facilities in the nature of luxuries, which can not be made to yield adequate return upon the capital invested. This would appear to be as broad a definition of a legitimate surplus as could be desired, and when we consider that the maintenance accounts of these carriers practically rebuild the roads every ten years, it seems to be as broad a definition as necessity would require. Such a surplus gives strength

and tone to the securities of a carrier. It invigorates and stimulates the management. And certainly such a surplus the more normally capitalized of these roads at present before us are already accumulating with exceptional and quite remarkable celerity. Surely in the presence of these reserves taken from the ratepayers in the past ten years, it is not reasonable to ask them to contribute more largely for the creation of a still greater surplus. These roads need more money, it is said—but they fail to show that their credit is not good, that they have been unable to secure money on current rates, or that they can not make needed improvements and extensions because of a lack of faith in their solvency and the stability of their securities. To increase the rate of addition to surplus for the reasons which the carriers have advanced would seem to be a work of supererogation.

THE BURLINGTON'S CLAIM OF "LEGAL RIGHT."

Rejecting or disregarding these arguments as to the need for greater revenue to support credit and surplus, the Chicago, Burlington & Quincy Railroad Company presents another ground of justification for advancing the rates under consideration. It is entitled "as a matter of legal right to a fair return upon the actual value of its property used for transportation, which value, from whatever source in the past created, is measured in its case by at least the cost of presently reproducing its physical plant. To obtain such fair return, it necessarily and equally is entitled to charge in the aggregate rates of transportation which, subject to the one limitation that the particular component rates are themselves reasonable and just to the shipper, will produce such reasonable return upon the property employed."

From this postulate the Burlington proceeds to the conclusion that it does not now enjoy a fair return, and finding itself confronted with the need of additional revenues to meet wage advances and other operation and maintenance charges and to offset diminishing net earnings, it may, as a matter of legal right, advance the rates upon the commodities selected, inasmuch as the advanced rates would be reasonable in view of the value of the service to the shipper. Logically it refuses to have its position regarded as an attempt to justify these higher charges, for in its theory it does not need to justify them, and what it presents to the Commission is termed an "explanation of them and of the occasion for their imposition."

Here is a proposition at once novel and searching. The Burlington road may be taken as representative in that territory. Its traffic is diversified; its capitalization comparatively conservative; its credit excellent; its tonnage large; and management capable. When asked by the Government to explain why it has increased its charges, its reply is that it has a right to do so because it is not now receiving a fair return upon the value of the property which it uses; value being

estimated cost of reproduction. This leads to a few questions: (1) What did the Burlington road cost those who built it? (2) What is its present value? (3) Whence came this value? (4) Is such increase in value a basis for increase in rates?

The controller of the company has given us the answer to the first question. He testified that the total investment in the property from the sale of stocks and bonds was \$258,000,000.

To the second question the company answers that its present value is \$530,000,000.

The difference between these two figures represents (1) investment in the property made out of earnings; (2) increased value of right of way and terminals owned by the company. This is the answer to the third question.

The position therefore taken by the Burlington is that it has a right vested in it by law to add to its freight charges such amounts as will yield at the present time a fair rate of interest upon more than \$270,000,000, which does not represent either the proceeds from the sale of a share of stock or a dollar of borrowed money, so long as the rate to the shipper is not unreasonable.

This contention opens up the broadest field of inquiry, as to the questions of law and fact upon which the Commission could enter. We have before us a property constructed by private persons under authority of Government to be devoted to a public use. These private persons invest in that property the issues of certain sales of stocks or bonds amounting to \$258,000,000. They capitalize this property at \$320,000,000, one-third of which capitalization is represented by stock and two-thirds by bonds; they carry upon their books the cost of road and equipment at \$364,000,000; and they now insist that the law gives them the right to a return upon \$530,000,000.

The Burlington has also presented an arbitrary figure of \$450,000,000, which seems to have been its original estimate of the value of the property, inasmuch as its tables introduced in this case were made with reference to such a value; and upon the argument the \$530,000,000 figure was described as the cost of reproduction, to which, however, it claims there should be added value as a going concern and for franchise rights.

In the year 1910, through the operation of this property, they were enabled to pay all expenses of operation, taxes, and maintenance, more for maintenance of way and structures by nearly \$2,000,000 than in any previous year (\$1,743 per mile of track), more for maintenance of equipment than in any previous year (\$1,669 per mile), and have remaining something over \$21,500,000. To this should be added an additional \$2,500,000 from rents and interest on property and securities owned, making approximately \$24,000,000. From

this we deduct \$1,750,000 for rents paid, and we have \$22,250,000 in round figures as the income of this property, which is an interest return of nearly 9 per cent upon the original investment in the property. If two-thirds of the \$258,000,000 represented bonds floated at 4 per cent (the rate paid on the present bond issues), the remaining one-third (this being the proportion of stock in the present capitalization) would receive a return of nearly 18 per cent. Under its present capitalization, \$320,000,000 (\$110,000,000 of which was in stock), this corporation had available for distribution as dividends \$13,975,620 in the year 1910, or 12.61 per cent on its capital stock outstanding. "This," says the Burlington, "is an insufficient return, because it is based upon a capitalization which represents much less than value, and the courts have decided that under the Constitution property of this character is entitled to a reasonable return upon the present fair value of its property employed in the service of the public."

In support of this proposition the leading case of *Smythe v. Ames*, 169 U. S., 466, is cited:

We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public.

Again, in *Wilcox v. Consolidated Gas Co.*, 212 U. S., 19:

It is no longer open to dispute that under the Constitution what the company is entitled to demand in order that it may have just compensation is a fair return upon the reasonable value of the property at the time it is being used by the public.

Relying upon these cases, the Burlington's full position is that it is immaterial how the property was acquired, what it originally cost, whether the present value may be claimed to be in part the result of earnings put back into the property in betterments, or is due to growth of traffic and development of the country served. "The sole inquiry open at this time is the actual fair value of the railroad as it exists to-day as a going concern. The company can not be lawfully required to take less than a fair and reasonable return upon this value. To be denied such return will be to appropriate in part a value that belongs to the owners for the use and benefit of the public without just compensation therefor being first paid or secured." Citing *Ames v. Railway Co.*, 64 Fed. Rep., 165; *Reagan v. Loan & Trust Co.*, 154 U. S., 362; *Missouri, Kansas & Texas Railway Co. v. Love*, 177 Fed. Rep., 493; *Kennebec Water Co. v. Waterville*, 97 Me., 185; *National Water Works Co. v. Kansas City*, 62 Fed. Rep., 853; *Metropolitan Trust Co. v. H. & T. C. Railway Co.*, 90 Fed. Rep., 683; *San Diego Land & Town Co. v. National City*, 74 Fed. Rep., 79; *Matthews v. Board of Commissioners*, 106 Fed. Rep., 9.

Notwithstanding these decisions, it remains for the Supreme Court yet to decide that a public agency, such as a railroad created by

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public authority, vested with governmental authority, may continuously increase its rates in proportion to the increase in its value, either (1) because of betterments which it has made out of income, or (2) because of the growth of the property in value due to the increase in value of the land which the company owns.

If the position of the Burlington is sound and is a precise expression of what our courts will hold to be the law, then as we are told there is certainly the danger that we may never expect railroad rates to be lower than they are at present. On the contrary, there is the unwelcome promise made in this case that they will continuously advance. In the face of such an economic philosophy if stable and equitable rates are to be maintained, the suggestion has been made that it would be wise for the Government to protect its people by taking to itself these properties at present value rather than await the day, perhaps 30 or 50 years hence, when they will have multiplied in value ten or twenty fold.

The books of the Burlington road now show some \$76,000,000 in surplus, which is the accumulation from operating revenues of many years. This surplus is not all held in the form of cash but has in part been put into the property in one form or another of additions and betterments. The stockholders, it is said, have chosen to waive their right to distribute this to themselves in the form of dividends and have reinvested it in the property. Without questioning the right of the stockholders to exercise this option, and without denying to them the right to a return upon any investment which they make, this much seems clear: That if the investment in a railroad at a given time is \$100,000,000, upon which it yields a net revenue of \$25,000,000, the stockholders may take that \$25,000,000 entirely to themselves. But if they choose to take but one-half of this amount as their return upon their investment and to reincorporate in the same property the remaining half of the net earnings, they may not for this reason increase rates during the succeeding year so as to give them a return upon \$112,500,000. It is idle to spend time in nice processes of reasoning over such a condition of fact. Public policy—the welfare of the state—forbids the adoption of any such working theory. Because of the addition of the \$12,500,000 a carrier may be entitled to an additional return upon the property, but is it entitled to *increase* rates so as to make that return? If the stockholders, as in the last sense trustees for the public, exercise their right to reinvest the company's money in the improvement of the property, the company may be entitled to an earning upon the value of that property without it in any way following that the rates out of which this surplus was accumulated shall still further be increased so as to provide that additional income.

Any new money put into the property, whether derived from the sale of securities or from surplus, which might have been appropriated to dividends, represents new value—an addition to the property—and on this addition the stockholders interested are entitled to a reasonable return if that can be had for an additional service given, but it is not equitable that because the directors of a corporation see fit to distribute to the stockholders less than the amount which the company earns and may be appropriated to dividends, the shippers who made this large dividend and surplus possible shall be increasingly taxed in geometrical progression to make return upon it. New improvements should bring new revenue. The risk of the stockholders in investing their money in these improvements is the same risk that they took when they invested their original funds in the original property. *San Diego Land & Town Co. v. National City*, 74 Fed. Rep., 87.

Again, the carrier is in law allowed to charge but a reasonable rate. If in exercising this right it imposes a burden upon the traffic which brings in so large a profit that a reasonable return may be made upon the value of the property and a surplus in addition, the shippers who paid those rates certainly can not be compelled to continuously pay higher rates because the directors of the company have not seen fit to distribute their full earnings in dividends. Let us suppose a carrier which through a series of years maintains itself in a condition that is better than the original condition of the property, which under the testimony in this case appears to be true with these roads, and accumulates a large surplus fund out of rates charged, which the directors invest in additional property, can the shippers who bore the burden of these rates and produced this surplus be subjected to an increase in rates because of the increased value of the property? What is the difference in the service to the shipper before there was a surplus and at present? If there is any difference in the service rendered it has not been shown in this case.

If a stockholder takes his money in the shape of dividends and later stock is issued to the same amount, which he buys out of this dividend money, should the shipper be subjected to an increase in rates because of this action? If he should, then it is within the power of a board of directors to indefinitely increase the shipper's rates. For all that is needed is that the railroad in one year make an exceedingly large return and after paying a dividend issue stock to the stockholders equivalent to the balance of the unappropriated operating revenue available for dividends, and this money, being invested in the property, creates more value which the shipper must care for.

Assume that some great financier saw fit to take no dividends from his railway, but to return to the property in additions and betterments all that the property yielded, which was at the time

adequate for the investment made, and reasonable in itself for the service given. Could he, by this means and the development of the country through which his road passes, so increase the value of his road that 10 years hence he would be entitled to a return for a given service five times as great as that charged originally? Must he not take the risk of reinvesting this money upon the theory that by so doing he can be enabled to move freight and passengers less expensively or develop new traffic on the same level of rates? If this traffic so develops that double tracks or new and extensive terminals are necessary, is that not a matter of independent concern similar to the reaching out by lateral lines into new feeding territory, which can not justify imposing added burden on those who already are securing a service adequate to their needs? None realize better than we do how difficult it is to draw the distinction between traffic developed by the investment of new capital and that incident to the established property. It is not practicable to draw any clear and distinct line. But because traffic grows and a railroad endeavors to meet it, are rates to steadily rise? The State of Illinois may add a hundred millions in value to the Burlington road by a donation of water front for a terminal. Would this justify rates higher than before this gift? Must not the Burlington take the property with an eye to the future, an increase in its revenues through greater capacity, more direct communication with shippers, quicker service, an increasing tonnage, and greater saving in labor? Or, if the Burlington builds into a new country, or one already well supplied with roads, must it not do this pioneering or experimenting at the risk of its stockholders and not at the risk of the shippers on its old line? The Supreme Court in the *Tift case, supra*, held that a railroad could not increase lumber rates because it was buying new equipment out of current earnings, although by so doing it was adding to the value of its property, and doubtless increasing the facility of movement of the lumber traffic. This principle makes against the contention of the Burlington directly, and we see no reason why it may not be accepted as settled law.

This record does not show, nor does the Burlington contend, that its stockholders have not in the past been remunerated adequately upon the basis of the value of their then owned property. Its position is that the property having grown in value with the growth of the West and the increase in traffic, it may advance rates up to the point that the shipper can afford to pay and under which the traffic will move.

We are not here dealing with the value of this property nor with the definition of value, whether value means investment, cost of reproduction, or something else; our position is that a railroad may

not increase rates upon shippers for the reason and as an outgrowth of the fact that it has accumulated out of rates a balance of profit which has been invested in the property. This investment must take care of itself; it must bring a return for itself, either in increased traffic or in the reduction of expenses of operation. There is no justification for the investment of this surplus if it is to have the effect of increasing the rates upon the shippers over the original line. If the theory is to be recognized that by increasing the value of their property by putting back operating revenue into the property a carrier may as a legal right increase rates, then the shipper is worse off each time he pays a rate which allows a revenue over and above a reasonable return upon the original investment.

Herein we have outlined the full position of the railroad and the opposing position. We do not regard the decision of this question as vital to this proceeding, however, accepting as we do for the purposes of this discussion the tenability of the Burlington's theory.

We now turn for a moment to consider the added value of railroad property by reason of the increase in the value of the lands held as terminals in cities and rights of way. Out of the difference between the original investment of \$258,000,000 and the estimated present value of \$530,000,000 it has been estimated that the increase in land values amounts to approximately \$150,000,000. We may agree with the contention of the Burlington that it is no concern of ours as to whether these lands were obtained by private or public donation in whole or in part, but a larger question of public concern is involved—the legal right of a carrier to continuously increase rates because of the growth of the community which gives this added value to the land over which the railroad runs. The states of Illinois, Iowa, South Dakota, Kansas, and Nebraska have not reached their maximum development. Their total population under the census of 1910 was but 32.66 per square mile, whereas the population of the states immediately to the east—Indiana, Ohio, New York, and Pennsylvania—was 143.23 per square mile. We have seen the population of the city of Chicago alone grow in 20 years from 1,105,540 to 2,185,283. To-day a road is built upon a prairie farm; next year it runs through a Kansas village; 20 years hence this same village may be a city of half a million.

It is unquestionable that Kansas would not enjoy the population that she has or the prosperity that is hers without the presence of the railroads, and those men of prophetic vision who projected those roads and invested their capital therein are not to be denied a share in the wealth which they have so largely helped to create. But as these lands increase in value with the growth of the communities which they serve should not this larger share coming to the railroad

arise out of the operation of that property and the increase in its traffic rather than by the imposition of a new burden of tolls upon those who use their road? This question is not of paramount importance in this case, but, it is urged, may become one of supreme moment if the carriers insist upon a right to increase rates in proportion to increasing land values. In a very real sense these added land values do not come to the railroad as a railroad, but as an investor in land which has been dedicated to a public use; and, being so dedicated, it may be strongly urged that the increment added thereto from year to year by communal growth should not necessitate an imposition of additional rate burdens upon the public. Again, it is said that the community increasingly taxes these lands upon their commercial value as real estate, and that therefore the public is estopped from denying their right to a return upon such basis of value. Without delaying to consider this matter it may be said that in this case it has been discovered that the ratio of taxes to operating revenues of the carriers remains approximately the same throughout the years. While the absolute tax somewhat increases the relative tax does not increase. Furthermore, such facts as we have been enabled to gather tend to indicate that land used for railroad purposes does not increase in value out of proportion to the increase in the value of the property as a whole.

Whatever the true economic or legal view may be as to the right of a carrier to consider the increase in value of its land as a part of the value upon which it is entitled to a reasonable return, such increase in value does not of itself establish the right of a carrier to increase rates upon a given service. Certainly if the Supreme Court may decline to lay down the absolute rule that "in every case failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable," *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S., 412, it is a conservative statement of the law to hold that a railroad may not increase the rates upon a number of commodities solely because its real estate has risen in value.

The Burlington has assumed that the true basis of a railroad's value was the cost of reproduction, and it may not be unworthy of our attention to consider the reproduction value of this property as estimated by the officials of the Burlington and present the record made herein as to the cost of building a road in this section of our country. It is said, and with no little supporting reason, that those who prophesy or fear that rates will constantly ascend from this time forward because of the increasing value of lands are mistaken; that no such results would take place because increasing earnings would care for increasing land values. This certainly should be so if the property is situated so that it can avail itself of the greater

volume of traffic produced by a richer and more productive territory. At any rate it is fair to say that the time has not yet come when values have so increased that they menace existing rates, whatever may be the support they give to the contention that rates should not be reduced.

VALUE OF ROAD AND RETURN THEREON.

The Burlington road cost, as a matter of original investment, \$29,000 a mile of single track according to its own estimate. Out of that investment the property has grown by virtue of its own earnings and the prosperity of the country into a property which the Burlington now claims has a value exceeding \$60,000 a mile. The Commission has had no opportunity to check this estimate, other than by comparisons with estimates of reproduction cost furnished by the shippers and those made by state commissions of the details of which and their reliability we have no more direct knowledge than we have of the engineers' estimates made by the railroads. The state railroad commission of Wisconsin, however, has estimated the value *new* of the Burlington within that state at \$38,000 a mile and its *present value* at \$32,000 a mile, including present value of right of way.

The state commissions of Wisconsin, South Dakota, and Minnesota have also made estimates of valuation, which show an estimated cost of reproduction (new) for the lines of the Milwaukee in these three states of \$40,000 per mile, as is shown in the following table introduced by the Milwaukee road:

Computation of cost of reproduction, new, Chicago, Milwaukee & St. Paul Railway on the basis of certain estimates of such cost by state commissions in Wisconsin, Minnesota, and South Dakota.

	Estimated cost of reproduction, new.	Miles, esti- mated.	Estimated valuation per mile.
Wisconsin state tax and railroad commission valuation of 1910 . . .	\$85,50 0	1,783	\$47,991.76
Railroad and warehouse commission of Minnesota, 1907	54,49 0	1,211	44,997.02
South Dakota railroad commission, 1908	34,41 0	1,534	22,433.09
Illinois on Wisconsin basis	19,91 0	415	47,991.76
Iowa on Minnesota basis	64,18 2	1,871	44,997.02
North Dakota on South Dakota basis	3,43 7	153	22,433.09
Missouri on Minnesota basis	6,29 0	140	44,997.02
Michigan on South Dakota basis	3,56 1	169	22,433.09
Total	291,878,796.70	7,266	
Additional miles in Minnesota since 1907	1,539,998.68	34	44,997.02
Total	293,408,695.38	7,300	
Less reduced miles in South Dakota since 1908	69,732.36	4	22,433.09
Net total	293,318,963.02	7,296	40,202.71

It will be noticed that the estimate made by South Dakota is \$22,000 a mile. There are doubtless thousands of miles in these great systems which are worth no more than that figure; many of

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them branch lines, built with light rails, laid upon the grade of the country through which they pass. And the Commission has before it the estimate made by a practical railroad contractor with extensive experience in this western country, who has built several hundred miles of road in that and neighboring states, whose estimate of the cost of reproducing the main line of such railroads as Kansas has, including right of way, but not including equipment or expensive terminals, was \$25,000 a mile, as here shown:

	Per mile.
For rails (70-pound steel).....	\$4, 200
For splices, bolts, spikes, etc.....	400
For ties (2,600 to 3,000, at 70 cents).....	2, 500
For ballast.....	4, 000
For grading.....	5, 000
For track laying.....	600
For incidentals, freight rates, etc.....	2, 300
For bridges, depots, roundhouses, right of way, and engineering expenses....	6, 000
	<hr/> 25, 000

Herewith are presented a series of tables for the principal carriers showing the return which they have made for the past four years upon an estimated value of \$40,000 per mile, single track, and on a basis of \$36,000 per mile. These tables are compiled by taking the operating income of these railroads and ascertaining what return that would make upon the \$40,000 and \$36,000 bases; first, on the all-stock assumption, that the stockholders of the Burlington had paid the full amount of \$40,000 per mile into the treasury of the company which had been in turn invested in the road. This, however, would be apparently unfair inasmuch as ordinarily these roads are bonded for two-thirds of their capitalization. We therefore present in succeeding columns the return upon the bonds (estimated always at 4 per cent) and the return that would be made upon the remaining one-third of the value in stock. It will be understood that this operating income is the operating revenue minus all operating expenses and taxes. And further it is assumed that the Burlington has leased or rented no lines from any other railroad or leased or rented any of its lines to any other railroad, and no cognizance whatever has been taken of any income from outside sources whatsoever although that income is ultimately the fruit of railroad profits. The operating income of the Burlington being \$2,408 per mile, single track, for 1910, this would have yielded 6 per cent upon a valuation of \$40,000 per mile. If two-thirds of this \$40,000 had been borrowed at the rate of 4 per cent, and the remaining one-third (\$13,000) represented stock issued at par, the stock would have earned 10 per cent.

CHICAGO, BURLINGTON & QUINCY.

Year.	Return on basis \$40,000 per mile, single track.				Return on basis \$36,000 per mile, single track.			
	Operating income per mile.	All stock.	Two-thirds bonds.	One-third stock.	Operating income per mile.	All stock.	Two-thirds bonds.	One-third stock.
		<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>		<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
1910.....	\$2,408	6.0	4	10.0	\$2,408	6.7	4	12.1
1909.....	2,369	5.9	4	9.7	2,369	6.6	4	11.8
1908.....	2,244	5.6	4	8.8	2,244	6.2	4	10.6
1907.....	2,422	6.1	4	10.3	2,422	6.7	4	12.1

CHICAGO & NORTH WESTERN.

1910.....	\$2,488	6.2	4	10.6	\$2,488	6.9	4	12.7
1909.....	2,627	6.6	4	11.8	2,627	7.3	4	13.9
1908.....	2,486	6.2	4	10.6	2,486	6.9	4	12.7
1907.....	2,855	7.1	4	13.3	2,855	7.9	4	15.7

CHICAGO, MILWAUKEE & ST. PAUL.

1910.....	\$2,361	5.9	4	9.7	\$2,361	6.6	4	11.8
1909.....	2,518	6.3	4	10.9	2,518	7.0	4	13.0
1908.....	2,394	6.0	4	10.0	2,394	6.6	4	11.8
1907.....	2,707	6.8	4	12.4	2,707	7.5	4	14.5

ATCHISON, TOPEKA & SANTA FE.

1910.....	\$3,697	9.2	4	19.6	\$3,697	10.3	4	22.9
1909.....	3,857	9.6	4	20.8	3,857	10.7	4	24.1
1908.....	3,494	8.7	4	18.1	3,494	9.7	4	21.1
1907.....	4,040	10.1	4	22.3	4,040	11.2	4	25.6

The trend of the highest judicial opinion would indicate that we should accept neither the cost of reproduction, upon which the Burlington's estimate of value is made, nor the capitalization which the Santa Fe accepts as approximate value, nor the prices of stocks and bonds in the market, nor yet the original investment alone, as the test of present value for purposes of rate regulation. Perhaps the nearest approximation to the fair standard is that of bona fide investment—the sacrifice made by the owners of the property—considering as part of the investment any shortage of return that there may be in the early years of the enterprise. Upon this, taking the life history of the road through a number of years, its promoters are entitled to a reasonable return. This, however, manifestly is limited; for a return should not be given upon wastefulness, mismanagement, or poor judgment, and always there is present the restriction that no more than a reasonable rate shall be charged.

THE REASONABLE RATE AND COST OF SERVICE.

Thus we return to the question, What is the reasonable rate that shall be charged to the shipper? The legislature may not make rates so as to confiscate the carrier's property. The carrier, on the other

hand, may not make rates which are unjust to those who by economic necessity are compelled to employ its services. Here, then, we have the minimum of legislative power and the maximum of the carrier's power. Between these lies a zone, indefinite and variable. Without question the carrier will tend toward the maximum, while governmental authority will be inclined—in fact, has been created—to repress this upward tendency. One moves inevitably upward to the highest rate which the traffic will bear; the other attempts to discover some relation between charge for service and cost of service.

The present record is full of contrasts between these two lines of tendency. The carriers, for instance, gave the following as their full justification as to the reasonableness of each and all of the proposed advanced rates in and of themselves: "In making up the tariff," said the vice president of the Burlington road (and all other carriers adopted this testimony as their own), "we considered each individual item, and we made no increase which in our judgment would materially affect the movement of the business or place an undue burden on the traffic. I think that the present rates were originally established to meet in many cases conditions that no longer exist, and that the same necessity from a commercial standpoint does not exist now as did when the rates were originally established, and that as a rule the value of the commodity is greater, and the shipper and consignee are both better able to pay approximately the same rate to-day than they were to pay these special commodity rates when they were originally established. We, as I have stated, advanced no rate beyond a figure which in our judgment it could stand and freely move." A full hearing was extended to all carriers as to the reasonableness from its standpoint of each rate involved, with no further result than this one answer.

The Supreme Court has said that one of the elements which should be given consideration in the establishment of a reasonable rate was the cost of the service, *Smyth v. Ames, supra*, but this is regarded by railroad men as an almost negligible factor.

"I think," said Mr. Ripley, "that the cost of service is only one of the items to be considered in the making of a reasonable rate, and not a very important item at that—either the cost of service or the returns made on capital. I think that while they may be considered under certain conditions they are remote." And again, "I think that the cost of the service has very little consideration in the making of rates. Rates are made without a consciousness on the part of the carrier's agent of the return that these rates will bring."

This is the purport of more of Mr. Ripley's testimony, and it is to be remembered in this connection that Mr. Ripley's experience as a traffic manager has extended from the Atlantic to the Pacific coast and over several great systems of railroad. "The maker of the rate,"

he says, "in the first instance must make the rate such as to permit of the freest intercourse and the freest interchange of commodities in the country, regardless of capital, regardless of cost—almost regardless of cost, but entirely regardless of capital." Then being asked as to whether the Commission should make rates after this railroad fashion, he said, "I think they [the Commission] should consider the value of the service first and foremost and leave the cost and the value of the properties to altogether secondary consideration." He was asked if he had said that the making of freight rates "has not, never did have, never will have, never ought to have, any relation to the capitalization of the railroads," to which he replied that this was a correct expression of his views.

Discarding the elements of cost and capitalization, he was asked to define a reasonable rate, and replied that it was one that the traffic would bear, "and the amount that the traffic would bear," he said, "is that amount of charge at which it will most freely move over the lines of transportation." This definition he again repeated when he was asked if the phrase "what the traffic will bear" meant the rate at which the commodities would "most freely move over the lines of the carrier," to which he replied, "I will qualify that by saying, 'What the traffic will bear and still move most freely and enable the products and the manufactures of one part of the country to be used to the utmost possible extent in the other.'"

This is the latest, the most modern, and the most liberal definition of this much-abused phrase. Indeed, it is so liberal that it is impracticable unless properly qualified. Mr. Ripley would not have us understand that a railroad is an eleemosynary institution. To say that a reasonable rate is one under which the traffic will most freely move is to say that it is the rate which casts the least burden upon the shipper. The rate that will carry the traffic farthest for the smallest amount of money—the lowest possible rate. But all of the time there is present in the mind the necessity of securing out of all of such rates not only the cost of transportation, which Mr. Ripley regards as negligible, but an adequate return upon the value of the property used. While this definition, therefore, sounds to the ear most philanthropic, it was doubtless not intended to convey any more subtle or philosophic meaning than this: That an individual rate should not be made with reference to the cost of the service to the railroad, nor should it be made with regard to the return which it would yield to the capital invested in the plant. It should be made so low that as great a body as possible of that character of traffic should move, but all the time there must be borne in mind the fact that out of its aggregate rates the property must be made to pay. This is the American system of railroad rate making.

“What the traffic will bear” may mean “all that the traffic will bear.” If it means that the rate must be measured by the amount that the shipper is willing to pay under necessity, it is extortion. On the other hand it may mean the least return for which the carrier can afford to transport the traffic. This theory of rate making seems to be that there is a certain amount of traffic which can be developed; that there is a certain volume of traffic which is to be moved, or which can be moved; that the rate should not be so high as to prevent any of this traffic from moving, nor should it be a lower amount than the carrier can obtain and still permit the freest possible movement. Such definition apparently makes the rate entirely a matter of judgment as to which there may be error. And, carried to its last degree, it permits indefinite discrimination between individuals, as well as between communities, for if the rate is to be made so as to permit the freest possible movement one shipper may not be able to extend his market at the rate given to another. Therefore he is entitled to a rebate. And the more distant community may not be able to compete with the nearer community for a common market. And therefore it is entitled to a lower rate than its more advantageously situated competitor. The experience of the commercial world led to the enactment of the act to regulate commerce which interfered with the full application of this theory, and we, of course, assume that Mr. Ripley stated his principle of rate making, not only with the limitation we have already noted—that rates were to be made so that, as a whole, they yielded adequate return to the carrier—but with the further limitation that they must be subject to the prohibitions of the law. Manifestly, under this principle all that stands between the shipper and extortion is the wisdom and the good sense of the traffic manager who makes the rates. If, in his judgment, it is advisable to carry a small volume of traffic upon a high rate, rather than a large volume of traffic upon a low rate, there is nothing to interfere with this decision, and all the consequences affecting the country at large, excepting now the right of appeal to the Government as represented in this Commission.

Rates being made upon this theory, the function of the traffic manager is that of a statesman; he determines zones of production and consumption, the profits of the producer and the cost to the consumer; he makes his rates, if he so pleases, to offset and nullify the effect of import duties and determine the extent and character of our foreign markets.

To make rates for transportation based solely upon the ability of the shipper to pay those rates is to make the charge for transportation depend upon the cost of production rather than upon the cost of carriage—to measure a public service by the economies practiced by the private shipper. This necessarily gives to the carrier the right

to measure the amount of profit which the shipper may make and fix its rate upon the traffic manager's judgment as to what profit he will be permitted. This theory entitles the railroad to enter the books of every enterprise which it serves and raise or lower rates without respect to its own earnings but solely with respect to the earnings of those whose traffic it carries. This is not regulation of railroads by the nation, but regulation of the industries and commerce of the country by its railroads.

That nothing stands in the way of extortion excepting the fair-mindedness of the railroad traffic manager is illustrated in this case by the examination of the traffic manager of one of the leading roads. He was asked why the present first class rate from Chicago to Kansas City should not be raised from 80 cents to \$2.40, and corresponding increases of 200 per cent made upon all the other class and commodity rates. His first answer was that some of the commodities would not move under such increased rates. Being told to assume that class traffic at such rate would move, his answer was:

The business conditions have adjusted themselves to the 80-cent rate. It would be a wrench to ask any 300 per cent raise on that 80-cent rate, and having existed on that 80-cent rate, we do not need 300 per cent of that 80-cent rate to continue to exist. We do not want to see any wrench in commercial conditions. We would ask, "Is it decent and fair and proper," and these considerations would appeal to us.

Being asked, further, to assume that one man owned all of the roads in that territory, could you give any reason why rates should not all be raised to the class basis, or increase them 200 per cent, the traffic manager answered:

Yes; because the advance would be too great of itself. It would be a shock to my sense of propriety—a shock to my sense of justice.

And that was the ultimate word. Rates are no higher than they are, not because there is any maximum standard based upon the cost of the service or the return to the carrier, but because to increase them would not be "fair or decent or proper"—in short, would not appeal to the conscience of the traffic manager. And this same witness was unwilling to acknowledge that his judgment of what was proper, reasonable, or just should be subject to review by this Commission or by any other tribunal—a position which may fairly be characterized as a modern extension of the ancient principle of divine right.

RATES AND REBATES.

Having in mind the theory presented by Mr. Ripley and others as to the value of the service to the shipper being the controlling factor in the determination of a reasonable rate, let us regard the significance of the specific problem presented in this case. Here we have a num-

ber of commodities which were given special rates by the carriers at a time anterior to the period of regulation of rates—rates which are lower than the class rates applicable to such commodities. This extension of preference to these commodities was made when carriers were proceeding upon the value-of-service theory and when there was a real competition between carriers, at least in this, that the carriers bid against each other for the business by giving a percentage off the published rate—a rebate. To what extent this practice obtained as to those particular rates does not appear, but the record clearly shows that rates between Chicago and the Missouri River were deeply cut as to the higher classes. The general rebate on first-class traffic between the Atlantic seaboard and Kansas City, for instance, was 40 per cent. This rebate is not cited as sporadic; such deduction was given to all the largest shippers of this character of traffic. And yet, be it parenthetically said, after those rebates were cut off and the full rate exacted, and this Commission made a reduction of about 6 per cent in this rate on complaint of shippers, the carriers appealed to the courts, and throughout almost the entire life of our order the courts by injunction maintained in effect the higher rates, which the carriers themselves had never exacted, excepting for the unknowing or smaller shippers.

It is not to be thought, however, that such a rebate as 40 per cent on all classes of traffic was general. The lower classes were subject to a less reduction and the commodity rates were themselves too often rebates. We have the word of no less an authority than Mr. Stickney, the late president of the Chicago Great Western, to this effect, and this suggestion is made by all the traffic men appearing in this inquiry.

We then find this situation existing—a body of class rates which were applied where no bargain was made between shipper and carrier, but always subject, as to competitive business, to a reduction sufficient to secure the traffic. Supplementing these rebated class rates the convenient commodity rate served as a vehicle for the preference desired. These rates varied from time to time. They were unstable because they were “made to get the business.” The carriers did not give them voluntarily—that is, out of any goodness of heart—but rivalry between carriers made each road vie with its competitor in the volume of traffic secured, for every ton carried above a most uncertain minimum was profitable. It may have been that a sense of propriety, of “decency,” had something to do in the establishment of these commodity rates; that there was a feeling in the traffic manager’s mind that the class rates were too high in themselves to be justifiable, and while admittedly they might be had from the unwary and infrequent shipper, it was unjust to exact them from regular patrons. Be that as it may, however, we have the testimony

of one of the best-informed authorities that from 3 to 5 per cent of the total gross freight earnings of these carriers were returned to the shippers as rebates. In a territory where freight earnings ran into the hundreds of millions each year, even so conservative an estimate as 3 per cent makes evident how real the reduction in the rates which the great industries and jobbers paid. This was saved to the carriers when the Elkins law became enforceable and was enforced; and all these rebates "came out of the net." Here then was a raising of rates to many shippers and a consequent increase in the net revenues of the railroads. An era of regulation had come; the carriers were to be saved from a devouring competition which put them in good times at the mercy of the most insidious traffic buyer and in the worst of times brought peril of rate wars, which led down a steep path to the federal court and the railroad receiver. In all the criticism of federal regulation—its implied absurdity as against inspired individual regulation—to which we have listened in this case, no one of the railroad men has spoken with deserved appreciation of the rich harvest that the railroads have reaped from the enactment and enforcement of the laws against preferential rates and individual discriminations. With the whole force of the Government behind them the carriers have laid a burden upon the shippers—and they are loath to pay tribute to the power which has saved them from themselves.

The rebate from the published rate became unfashionable; it was discredited by law, and railroad society regarded it askance. But the rates were still to be made by traffic managers who sat together in conference and "competed with each other across a table." This gave it into the hands of the most considerate of traffic men to say what the rate should be; for all must do as one insisted he would do. The day of open "scalping" of rates had passed, but the shipper who for 20 years had marketed his commodity upon a more or less fixed variant from the published charge was full of protest and perhaps of threat. To meet this situation the commodity rate was always available. And where class rates had not been exacted in full, a commodity rate could be made to care for the shipper's demands and perhaps his needs. So we find many new commodity rates put into effect after the Elkins Act, which represented the existing and actual rate as distinguished from the paper or published rate. An effort was made also to raise existing commodity rates to a higher level—toward the class scale. But there was still left sufficient of vitality in the shipper to compel a retreat in many of these raises. The era of competition between carriers had not altogether closed; it could not end so long as shippers had it in their power to route shipments as they chose and the pooling of freights remained under the ban of the law. So the effort to bring up the commodities of lesser volume to a higher level of rates was abandoned, or at least deferred

These are the commodities involved in this case, on which the carriers sought to raise the rates in 1905, but soon retreated to present figures. They now propose new rates, approximating those of 1905.

It takes little imagination to draw a parallel between this picture and that which England saw, and to which we have earlier referred, when upon the enactment of the maximum rate law by the British Parliament the British carriers were no less slow than their American brethren to raise their rates. "If we are to have regulation," said both sides of the ocean, "we will secure its full benefits." And there soon followed in America as in England legislative restrictions upon such action. Human nature, in the railroad offices of England and of America, and in the legislatures of both countries, is much the same, and follows along easily traceable lines of identity.

EFFECT OF REGULATION.

What has become, meantime, of the theory of the reasonable rate based on the value of the service? The carrier finds itself in a position to command with supporting law a higher rate and reaches out to get it. This is not the-least-possible-rate-that-the-traffic-will-bear theory. It is its abandonment. It is the recognition of the class rates as reasonable rates toward which all rates should tend, and to which the carrier will, when it can, bring all rates. Commodity rates are in this view concessions from the reasonable rates. To press all rates upward to a fixed standard is not adjusting rates to meet specific conditions, nor is it "developing traffic," nor is it "stimulating competition between markets." What becomes of these fine phrases if there is recognized in the railroad man's mind the thought that rates should be elevated when other carriers and a conserving law will support such action? Can it be that the only forces which the carriers have recognized are competition between each other (which has now become less intense, or perhaps more rational) and the pressure of shippers to reach as far from home as possible to supply wide markets? And when this competition is nullified or minimized, and this pressure need not be yielded to—is there then a standard of rates which the carrier finds reasonable and just, one which the conscience of the traffic man will approve as neither oppressive to railroad nor to shipper?

This approaches or at least looks toward a recognition of the idea that rates should not be as unstable as air; that in practice they can not be without violating the canons of fair dealing as between industries and communities. Indeed, it is far on the way to a recognition that there may be some intimate relation between cost of service and rate of charge; that all markets can not be open to every producing point; that shippers must enjoy and suffer the advantages

and disadvantages of their location and adjust themselves to the transportation situation; that it is not within the province of the railroad to "make" one city as against another, or unmake one industry to satisfy the eager competition of another industry, and a carrier's desire for tonnage. And possibly it is not too much to hope that in some good day some traffic manager will announce the principle, that a railroad's function is to sell transportation at a fair rate; and that it is beside his place to be the ultimate regulator of the economic conditions of the country.

To be sure we can never depart from the *ad valorem* principle in the making of rates. No governmental railway system does. The national highways may as properly tax a carload of tea with some relation to its value as the state may tax an import on the same basis, or the toll road distinguish between the automobile and the wheelbarrow. In all charges of an arbitrary character where public policy is involved there is need that the greater burden shall fall upon those best able to support it. But classification of freight cares for value in the greater part.

In a land as intimately bound together in commerce as is this, where each city, village, and farm depends to large degree upon the resources of a nation for its supplies, there must arise questions of public welfare in the charges that the highways of the public may make altogether aside from questions of discrimination. It concerns us that we shall have the advantages of our varied resources; that New York and Chicago shall be made accessible to the fruit of Florida and California; that Minneapolis and Buffalo shall serve the thickly populated eastern states with their flour; that the wide plains of Texas and Wyoming shall be brought as near as possible to the cattle-consuming centers; that coal and lumber shall go where fuel and trees are scarce; and that, in short, our products and our people may be as mobile and as fluent as conditions may permit. Therefore, it may not answer public needs to always measure rates by any fixed standard, but the deviations from standard should be made primarily with an eye to public advantage, rather than to the volume of freight which a carrier may secure. This is not a far departure from that policy which the old carriers of the more congested portions of our country have in recent years adopted. First, a basic classification of commodities with relation to their relative value, bulk, fragility, and other proper transportation considerations, upon which is built a wisely balanced schedule of charges fixed with reference to well-defined zones of distributive territory; and, beneath these, those special rates on certain commodities as to which the public need demands that exceptions shall be made.

This makes for the rigidity of rates, it is said. Unquestionably. Do agreements between carriers that they will not advance or lower

rates without notice to each other make for easy flexibility? Yet this was railroad policy for many years. Do conferences between carriers' traffic managers, the establishment of common agents to file common tariffs, the mutual notification of each carrier as to what is proposed by every other—are these devices of the carriers made to promote ready change and individual initiative or are they the well-designed machinery of the roads to put a brake upon change, a veto on troublesome flexibility?

It is not necessary to direct attention to the act to regulate commerce in this respect, almost every section of which is grounded on the legislative belief that certainty and stability of rates are virtues much to be desired. The very latest expression of this belief is found in those provisions of the Mann-Elkins bill touching rates put in to meet water competition, and the new section 15 relating to rate suspensions, under which we are at present acting, all of which comes to this: The railroads long since sought to make rates stable by conventions, fines, and gentlemen's agreements. They saw the evils of unrestricted flexibility, which meant adjustment of rates to the ambitions of the carrier. They could not live with each traffic manager from day to day discovering by instinct the reasonable rate. The Government now comes in this same path and seeks to stay the changes which caprice or a carrier's selfishness may dictate. And we ask the carriers, Why is this present rate, which you fixed yourself, unreasonably low, if, as you say, cost of service is not to be considered? The answer comes that cost of service is now to be considered; that the traffic will now bear a higher rate; that its movement will not be impeded if a greater charge is made. Still seeking, we inquire again, Why was not such a higher rate imposed long ago? The answer is, We could not maintain it; the pressure of shippers and carriers was too strong. May we not ask one more question, Why do you then seek it now? And should not the answer be, Because we think we can get it. We are united in mind and the law will safeguard our right to it.

The reasonable rate was one that could be secured. That definition remains as the carriers' guiding star. But under regulation the reasonable rate is one which the shipper should pay in justice to the carrier which renders the service. Once the theory of bargain and sale of transportation is abandoned the rate becomes a matter for ascertainment by some method other than what the shipper can give or what the carrier will take. The railroad has a service to sell. The shipper wishes to buy this service. The law says these two may not haggle as to price. The one must sell at a fixed price and the other pay that price. How, then, can the value of the service to the shipper in the accustomed sense of that phrase be discovered? Does not frankness require the answer that no such method is now

possible? The individual shipper has by the course of law been transformed into the general public. The carrier has by like process been transformed into a public agency. The law says to the carrier that it may as to all men make its charges with relation to the value of the service it offers to all, and if it fixes this value upon considerations which are outside its function as a public agency—if it seeks, for instance, to make itself the beneficiary of the prosperity of private industry, the law will interpose to correct its charges.

RAILROAD FIGURES AS TO COST OF SERVICE.

While we find the carriers contending uniformly that in the making of a reasonable rate the cost of service is practically a negligible factor, yet the contention is herein made that the carriers should be allowed to increase their rates upon that ground. In short, that addition to cost of service justifies increased rates. It becomes of immediate importance, therefore, to learn what we may as to this factor in the problem. That the railroads are not indifferent to this element is shown by the fact that some of those of highest grade keep such figures. It would be remarkable indeed if, in this time when all great business enterprises make analyses of costs, our railroads should keep no such accounts.

When we have sought to learn the cost of railroad service, a two-fold answer has been made: (1) That rates were not, and could not be, made with reference to cost because some traffic could and should bear a higher rate than other traffic; and (2) because it was impossible to allocate to the different services rendered their proper share of expenditures. The first of these answers we have considered above. As to the second, it has been testified by an official of an important carrier that it was entirely feasible to absolutely segregate about 51 per cent of the cost of operation between passenger and freight traffic; that about 29 per cent was subject to some arbitrary division, but that for all practical purposes it would be accurate; and that only the remainder, or 20 per cent of the whole, had to be determined upon an arbitrary basis. So that it was regarded as practicable by statisticians to leave but a very narrow "twilight zone" between the actual cost of moving a ton of freight and the statistician's estimate; and this estimate, it was thought, would not vary 5 per cent from actual cost. This is readily apparent from the fact that of the total operating expense on most of the roads substantially 50 per cent is chargeable to "conducting transportation," 25 per cent to maintenance of way and structures, and 25 per cent to maintenance of equipment. There is no difficulty in segregating the cost of maintenance of equipment as between passengers and freight. Likewise the 50 per cent under the head of conducting transporta-

tion is easily segregated, excepting as to some station, yard, and similar expenses, which constitute a small proportion of the total.

Thus practically 75 per cent of the entire expense is taken care of. The expense of maintenance of way and structures can not be allocated, and this has to be divided arbitrarily. Moreover, that it is not impracticable to estimate cost of railway service is evidenced by the fact that we have before us the cost figures of both the Santa Fe and the Burlington lines. The Santa Fe road has had in its employ for many years a man who has a national reputation as a statistician. It is a part of the general efficiency of the system of that great road to keep such accounts so that the management may ascertain through varying periods of time how the income of the road is being expended. While the figures, as the carriers contend, may not be sufficiently definite as to be authoritative upon the cost of carrying traffic, they clearly and unquestionably show the relative cost from year to year because the same system of bookkeeping and statistical accounting obtains throughout these periods of time. If we find that on a certain division of the Santa Fe road, for instance, the cost of moving a ton a mile is 3 mills in September, 1910, and $3\frac{1}{2}$ mills in September, 1909, we may not be justified in concluding that to the nicety of one-tenth of a mill this is the cost of moving that unit of traffic, but we are justified in saying that the cost over that particular portion of the road for that one month including all operating expenses has decreased in 1910.

The question is raised with much seriousness in this case as to why this particular traffic should be called upon to bear an increased burden. We are not referring now to the character of the commodities but to the traffic which moves in this particular territory—to put it broadly, why should Kansas City-Chicago rates be increased? There is no showing made by the carriers that any additional burden has been cast upon the traffic in this territory which has not been imposed upon traffic in all western territory. The carriers have confined themselves in this regard to a showing that the movement of freight generally has become more expensive owing largely to greater cost of labor. Some of the carriers frankly stated that it was their intention to increase other rates where that was practicable, that this effort was but a beginning.

Having in mind, then, these considerations, we pass to an examination from railroad figures into the cost to the carrier of carrying a ton of freight a mile as shown by the Santa Fe and Burlington operation sheets. Cost, it will be noted, includes all operating expenses and taxes; not merely the cost of running a train over a track. (The figures herein will be found set forth in the tables forming Appendix B, attached at the close of this report.) The

traffic largely in controversy here is that which moves between Chicago and the Missouri River, and we will consider first the cost of moving a ton of freight 1 mile in this territory on the Illinois and Missouri divisions of the Santa Fe road.

On the Illinois division the expense of moving 1 ton 1 mile for the year ending June 30, 1910, was 3.79 mills, and for 1909, 3.96 mills; on the Missouri division the 1910 cost was 4.63 mills, and the 1909 cost 4.48 mills. These figures include both main and branch lines. As illustrating the difference in the cost of operating main lines as distinguished from branch lines, in the year 1910 the cost on the Illinois division main line was 3.71 mills, and on the branch lines 6.31 mills; on the Missouri division the main-line cost was 4.29 mills and the branch-line cost 17.75 mills.

During 1910 the Illinois division hauled 567,000,000 net ton-miles of freight as compared with 437,000,000 in 1909, and the number of tons per mile of road net increased from 1,500,000 to 2,000,000, or 33 per cent. The maintenance of way and structure accounts in these two years increased from \$280,000 to \$455,000, or about 62 per cent. The maintenance of equipment cost was substantially the same for both years. The transportation expenses increased from \$750,000 to \$949,000, an increase of about 27 per cent. It thus appears that with the ton-miles increasing almost one-third and the way and structure account increasing nearly two-thirds, the company was enabled to move a ton of freight over that division 1 mile for about 4 per cent less in 1910 than in 1909. It is obvious that the extra maintenance noted above was more or less arbitrary, and bore little relation to the increase in traffic. If the way and structure account had increased only in proportion to the ton-miles the operating costs would have been still lower, as shown by the figures of 1910 compared with 1909. However, it should be noted that the maintenance of equipment expense on this division remained practically the same. If that cost had increased in proportion to the net ton-miles the operating expense of moving a ton of freight might nevertheless have been something lower in 1910 than it is reported for 1909. The fact that the ton-miles increased about one-third and the transportation expense about one-fourth illustrates very clearly that as business increases even the direct expense of conducting transportation does not always increase at the same ratio, for it must be remembered that in this year (1910) is included a portion of the increase in the rate of wages and considerable in the way of the increase in the cost of coal, due both to the labor difficulties in the coal fields during the spring of 1910 and to the unusually severe winter preceding.

On the Missouri division while the cost of moving a ton of freight 1 mile increased about 3 per cent, from 4.48 mills to 4.63 mills, the

tons per mile of road increased about 24 per cent and the way and structure account from \$323,000 to \$523,000, or about 62 per cent, and the maintenance of equipment from \$573,000 to \$635,000, or about 10 per cent, while the transportation expense increased from \$800,000 to \$1,024,000, or but 28 per cent.

Taking these two divisions together the cost of moving a ton of freight 1 mile was about the same for the year 1910 as for 1909, notwithstanding increases in wages and in the price of fuel that may have occurred during the last year and a material increase in the amount expended on the maintenance of way and structures in 1910 as compared with 1909. While there may be a contention on the part of the carriers that these freight operation statistics do not show the whole cost, yet it is not contended by them that it does not fairly show the comparative cost of one period with another, as it is for this very purpose that these statistics are maintained by the carriers. Using them for this purpose to compare the cost of July, August, and September, 1910, with the same months of 1909, on traffic moving between Chicago and the Missouri River on the Illinois and Missouri divisions of the Santa Fe road, the following table is made from the statistics referred to:

Cost of moving a ton of freight.

Month.	Illinois divi- sion.		Missouri divi- sion.	
	1910	1909	1910	1909
	<i>Mills.</i>	<i>Mills.</i>	<i>Mills.</i>	<i>Mills.</i>
July.....	2 97	3 78	3 62	5 28
August.....	2 93	3 28	3 65	3 73
September.....	3 00	3 58	3 47	4 30
Average.....	3 00	3 55	3 58	4 47
Average on Illinois and Missouri divisions.....	.....	.....	3 29	4 01

The average freight rate per ton per mile in 1910 on the Santa Fe was 10 mills and it cost that road, according to the nearest approximation possible, to haul that freight, paying its proportion of upkeep of plant and of all general expenses, an average of 3.29 mills on the Illinois and Missouri divisions of its road. The remainder of the rate charged went to the return on investment.

The costs for July show that though the net ton-miles hauled in July, 1910, exceeded those of July, 1909, about 33 per cent, yet the transportation expense increased only about 15 per cent. In August the ton-miles increased about 10 per cent and the transportation expense actually decreased 10 per cent; in September the ton-miles increased about 20 per cent and the transportation expense increased about the same.

The following table shows the cost of moving a ton of freight on the Burlington for the months of July, August, and September of 1909 and 1910, and the average for the three months:

Moving a ton of freight on the Chicago, Burlington & Quincy Railroad east of Missouri River.

Month.	1910	1909
	Mills.	Mills.
July.....	5.87	4.76
August.....	4.87	4.38
September.....	4.36	4.57
Average.....	5.03	4.87

The average freight rate on the Burlington in 1910 was 7.83 mills per ton per mile.

It will be observed that the average cost of moving a ton of freight over the Santa Fe lines between Chicago and the Missouri River for the three months of July, August, and September, 1909, was 4.01 mills, while for the same period of 1910 it was 3.29 mills, or a decrease of nearly 20 per cent, while on the Burlington the cost has increased from 4.57 mills to 5.03 mills, or an increase of 10 per cent. This difference between the Santa Fe and the Burlington suggests two questions: (1) Why should the cost of moving freight on the Burlington be so much greater than on the Santa Fe? and (2) Why should one decrease and the other increase during the same periods of time?

The answer to the first question may be that the Santa Fe has practically no branch lines between Chicago and the Missouri River, while the Burlington branch line mileage compared to its main line mileage is very great. The report of the Santa Fe would make it appear that the expense of moving freight on branch lines is far greater than on main lines. For instance the cost in August, 1910, on main lines east of Albuquerque was 4.05 mills, while on the branch lines in the same territory the cost was 7.85 mills, or practically double. This would readily account for the apparent higher cost upon the Burlington.

The answer to the second question is probably to be found in the fact that the ton-miles moving over the Santa Fe were much greater for the three months of 1910 than for 1909, while upon the Burlington the volume of traffic substantially decreased.

From the Burlington freight operating sheets we find that on the divisions east of the Missouri River the cost of moving a ton of freight 1 mile in July, 1909, was 4.96 mills and for the same month in 1910 was 5.87 mills, while the tons moved 1 mile decreased from 402,000,000 in 1909 to 340,000,000 in 1910. The cost of conducting transportation during July, 1909, was 1.92 mills, and in July, 1910, 2.53 mills.

For August the 1909 cost was 4.38 mills, and 1910, 4.87 mills; for conducting transportation 1.70 mills in 1909 and 2.19 mills in 1910; the tons decreased from 487,000,000 to 425,000,000. The cost in September, 1909, was 4.57 mills; in September, 1910, 4.36 mills; conducting transportation, 1909, 1.75 mills, and 1910, 2.11 mills; the tons moved decreased from 489,000,000 to 457,000,000.

These figures as a whole are among the most suggestive to which the consideration of the Commission has been directed. They appear to make it possible to overcome the one hitherto insuperable objection which has been raised against the primary basing of rates upon cost. This is the effort in all the great business enterprises of our time—to know what a unit costs the plant. In all such cost figures there are arbitraries of many kinds and varying importance. These must be criticized, checked, corrected, and compared through a number of years before they may be said to be in any sense reliable. But there is no scientific achievement without the drudgery of detail, long delay, and many tiresome comparisons, tests, and analyses. What can a certain transportation plant render a certain service for? What is the lowest figure at which transportation can be sold and some profit made? These are very fundamental questions to which too little attention has been paid. We see from the figures at hand how slight is the actual transportation cost itself compared with the full return which must be made to care for and sustain the great going machine which gives the service. Once we have learned the comparative costs for various services, it is not fanciful to say that a schedule of rates may be made which will approach justice as between services. Supplement cost with scientific classification of freight, giving their due to all the various factors, such as value, bulk, and hazard—especially to value—adding return for use of plant, and we have something certainly more nearly akin to reason than the hazard of a traffic manager, no matter how benevolently inclined. Such a theory gives force to every factor which the Supreme Court has said should be considered in the fixing of rates for public utilities. The investor would have his return, the value of the property would be cared for as a part of the rate, though this return would of course vary with the rates as at present, one service making a larger return to capital than another.

THE MILWAUKEE STATEMENT OF COST.

The cost of conducting transportation, as this term is used in railway statistics, includes the greater part of the total operating expenses of a railroad, and it is as much subject to rises in the wages of labor and in the prices of material as any of the other expense accounts. Indeed, cost of labor is a much larger con-

stituent of this account than of any other operating account. No reason is apparent on the face of things why, if the property devoted to operation is once placed in an efficient operating condition, the cost of maintaining it in that condition should materially increase in proportion to the cost of conducting transportation. W. M. Acworth, the leading English authority on railway economics, says:

Expenses increase as traffic increases, but by no means in direct proportion. Certain expenses—for instance maintenance of works—hardly increase at all; others—for instance, terminal handling of goods at big stations, where the staff can be normally kept fully employed—increase almost as fast as the traffic. The bulk of the expense is intermediate between these two extremes. On the whole, a common and probably roughly accurate estimate is to say that half the total expenses is fixed; half varies with the traffic. That is to say, if it costs x to deal with 1,000,000 units of traffic, 5,000,000 units will cost not $5x$, but $\frac{1}{2}x + (\frac{1}{2}x \times 5) = 3x$. Therefore the heavier the traffic the lower (profits remaining equal) need be the rate.

This is no more than a statement of a commonly accepted theory, that unit cost decreases with increase in the units produced. Nevertheless, the position is taken by the Chicago, Milwaukee & St. Paul Railway Company in this proceeding that as their traffic has increased their cost per unit has increased. And this position is supported by a table of estimated freight expenses in conducting transportation per 1,000 tons 1 mile, which shows this result:

Average cost per 1,000 tons.

1901.....	\$2. 209
1902.....	2. 137
1903.....	2. 388
1904.....	2. 691
1905.....	2. 469
1906.....	2. 366
1907.....	2. 488
1908.....	2. 626
1909.....	2. 655
1910.....	2. 963

It will be noticed that in 1904 the cost was higher than in any other year up to and including 1909. This, therefore, of itself does not indicate a progressive cost in the carrying of traffic. Why this great increase in 1910 over 1909? The table shows an increase in wages of engine and roundhouse men of \$750,000, in train service of nearly \$400,000, in switchmen, flagmen, and watchmen over \$300,000, in station service of \$300,000, and in fuel of over a million and a half. The volume of freight was about 7 per cent higher in 1910 than in the preceding year.

The accuracy of this estimate and its reliability as a basis for any conclusion, beyond the fact that wages and fuel cost have somewhat increased, may be doubted. It appears, for instance, that in 1909

the car mileage balance which the road had to pay to other roads on borrowed cars was \$811,000, while in 1910 it was \$1,400,000. This difference of \$600,000 is accounted for on the ground that owing to the unusual season and congestion the road was unable to relieve itself of foreign cars on its tracks. Another reason is that much of this mileage was paid to the new extension of the Milwaukee—the Chicago, Milwaukee & Puget Sound. In 1908 the car mileage balance was but \$268,000, or \$1,130,000 less than in 1910, before the Puget Sound was built. Loss and damage claims paid rose from \$735,000 in 1909 to \$1,027,000 in 1910, so that altogether we may regard 1910 as a most unusual and abnormal year with the Milwaukee road.

Turning to the income statement of this railroad (see Appendix A) it would appear that to add less than \$6,000,000 to its gross earnings for the year 1906, it cost the Milwaukee road \$4,000,000 in additional operating expenses over and above those for the year 1905. An increase of \$5,000,000 in 1907 cost \$4,000,000. In 1908 a decrease of \$3,000,000 allowed but a reduction in operating expenses below the preceding year of less than \$1,000,000. A rise of \$3,500,000 in gross revenue brought increased operating expenses of more than \$2,000,000, and in 1910 to add over \$5,000,000 to the gross added over \$6,000,000 to expenses of operation. The operating ratio in the five years increased from 61.62 to 69.53 per cent. Total operating revenues increased 29 per cent in the five years 1906–1910 over 1901–1905, and total operating expenses increased 36 per cent for the same periods. Is there any explanation of this? We see from the income statement that the net profits have steadily increased; that the rate paid on preferred and common stock has been maintained, while the balance increased until the year 1906, and decreased since that year.

This fact is interesting: That the net profits of the road were well maintained and on the up grade throughout the entire decade, barring the falling off in 1908. If we eliminate the year 1910 from consideration, because that was the year in which the Puget Sound road began operations, we see that the Milwaukee was able in 1909 to pay 7 per cent on both preferred and common stock and had a balance of \$3,796,586, notwithstanding the highest operating ratio for the eight years preceding.

In 1906 maintenance of way and structures cost \$8,179,522, as against \$5,956,586 for 1905. In 1903 it had cost as much and in 1902 nearly a million and a half more. Each year following 1906 down to 1910, to maintain its way and structures cost the Milwaukee less than in 1906, but in the latter year the figures again rose to nearly eight and a half million. This certainly does not evidence a “plowing in” of these charges in the latter half of the decade.

Turning now to the maintenance of equipment, we find that the figures run:

1905.....	\$5,181,586
1906.....	5,598,046
1907.....	8,589,757
1908.....	6,968,555
1909.....	7,270,774
1910.....	7,724,569

Here there was an increase in the five years 1906–1910 over 1901–1905 of 70 per cent for maintenance of equipment, or in round figures the Milwaukee expended seven and a quarter millions per year in maintaining its cars and locomotives in the period 1906–1910 and only four and a quarter millions per year for the previous five years.

We come next to consideration of traffic and transportation expenses, and find that these ran for the five years as follows:

1906.....	\$19,055,054
1907.....	21,956,033
1908.....	22,628,232
1909.....	23,098,477
1910.....	27,469,993

Out of every dollar taken in for the carriage of traffic in 1910 it cost the Milwaukee nearly 4 cents more for actual transportation expense than in 1909, while on the Chicago & North Western (a road very hard hit by weather and fuel conditions) it cost in 1910 less than 3 cents more than in 1909; on the Rock Island a little over 1 cent more; on the Santa Fe but 2 cents more, and on the Burlington less than 1 cent more. These figures run into the millions easily. Four cents added to the cost of transportation on each dollar received means a total annual increase of \$2,660,000 for the Milwaukee, as against an increase of less than \$800,000 to the Burlington on its increase in ratio.

Going as far back as 1906 we find an equally striking contrast. At that time the Milwaukee was conducting its transportation at a figure below that of either the Northwestern or the Rock Island, although at not as low a ratio as the Santa Fe or the Burlington. While the latter in the five years, 1906–1910, increased its ratio of transportation expenses to operating revenues from 30.38 to 33.84 per cent, the Santa Fe from 28.26 to 31.16, the Rock Island from 37.69 to 40.77, and the Northwestern from 35.98 to 41.32, the Milwaukee increased from 34.47 to 41.31—much the greatest ratio of any of its competitors. These are hard facts to explain. And they have not been explained.

"TOO MUCH BUSINESS."

The Milwaukee's expert drew from these figures the conclusion that it was costing that road more each year to conduct its business saying:

While out of the volume of business it has had it has been prosperous, present conditions menace that prosperity—unless they are changed—absolutely doom it. Now the position of the St. Paul road is that it ought not to have to wait until the receiver knocks at the door before it is permitted to make such changes in its rates as will prevent future disaster.

The fact was pointed out that the Milwaukee road had built a transcontinental extension in the past three years, notwithstanding the gloomy outlook, to which the reply was given:

Had it not been for the business that transcontinental line will give and is giving and has given, the conditions of the St. Paul road would be radically different to-day. But for the income derived from that property the St. Paul Co. would have shown a deficit last year instead of the slight addition to the surplus.

He was asked if this newly constructed road, whose tariffs had not been filed more than a year, had kept from embarrassment a road such as the Milwaukee, which had been in existence for a great number of years in one of the richest portions of the country, and he said:

There was about \$2,500,000 added to the surplus last year by the Milwaukee & St. Paul road, nearly all of which came from the Puget Sound road.

He was then asked:

Suppose that rates were increased so that within a short time you had \$100,000,000 of surplus, would that in any way prevent your coming in again for another increase in rates, if there was a demand for higher wages on the part of the men?

To which he replied:

Not if the increased cost of service was kept below the increase in revenue. If the cost of service per unit is increasing in a larger ratio than the income per unit, then your income is being eaten up and there is but one end to that, and that must be guarded against and prevented. If your expense per unit is where it should be, below the ratio of increase, then your rates will be reduced. As a matter of fact, if the economic laws that ought to be observed had been observed by the St. Paul Railroad, we would be in a position to reduce rates to-day instead of increasing them, because with the increased business the increase of tonnage, the added volume of business, this ought to result in a decrease in the cost of doing business, and consequent decrease of revenue."

Q. But as conditions are you suffer because you have got too much business?

A. We will continue to suffer. The more business we get the more we will suffer.

Q. The misfortune you labor under is having too much traffic to handle?"

A. Yes, sir; under present conditions you lose more money every time you take on a thousand tons of freight.

Altogether this is a most surprising argument, that as a railroad's freight traffic increases it grows poorer, when it still has room on its tracks for more business and is building extensions to get greater

traffic. In contradistinction to this position and in support of that quoted above from Mr. Acworth, is the testimony of Mr. Ripley, in which he said:

A very large proportion of the expenditures of a railroad remain fixed, notwithstanding that there might be a large decrease or a large increase in the earnings. Many of our expenses are not affected by our increase and there is hardly any year that we could not increase our earnings \$10,000,000 without increasing our labor more than a small fraction of that. We do not employ, as a rule, when we have a large increase in our earnings, any additional help as to a large portion of our business; it takes more enginemen and more trainmen and more men in the operating department and some additional help at stations, but not very much, and it is notorious that we can increase our earnings ordinarily enormously without increasing our ratio of expense proportionately. That ought to be the case, but in the last two or three years everything has been against us. We can probably increase our earnings \$10,000,000 next year, or at least we could without expending more than \$2,000,000 additional for labor.

Now it appears that the Milwaukee's freight revenue per train-mile, that is, for hauling a train of freight cars 1 mile, was \$2.32 in 1910, \$2.29 in 1909, \$2.22 in 1908, \$2.38 in 1907, \$2.34 in 1906, \$2.25 in 1905, \$2.11 in 1904, so that out of the operation of a train, more was received per mile of run in 1910 than in any other but two years of those given. And this, notwithstanding a slight decline in the return per ton of revenue freight carried, which was in 1906, \$1.53, in 1909, \$1.53, and in 1910, \$1.46; the rate per ton-mile moving in the same years as follows: 1906, 0.862 cent; 1907, 0.856 cent; 1908, 0.812 cent; 1909, 0.838 cent; and 1910, 0.843 cent.

Analysis of its reports show that the ratio of cost of conducting transportation to the total operating revenue of the Milwaukee was greater averaging the five years ending June 30, 1910, with the five years ending June 30, 1905, than for any other leading system or road in its territory. With a ratio of increase in the cost of conducting transportation to the total operating revenues of but 3.8 per cent for the Santa Fe, less than 1 per cent for the Alton, and less than 3 per cent for the Northwestern, we can not regard an increase of over 10 per cent in the Milwaukee's ratio for one five-year period over another as a basis upon which an increase of rates may be properly predicated for the railroad systems serving that territory.

An examination of the exhibits furnished by the Milwaukee road satisfies us that we must arrive at either one of two conclusions: (1) That the road is not as efficiently managed as others—a view which we decline to accept; or (2) that its tables do not fully reveal their own significance.

HIGHER COST OF MATERIALS, FUEL, AND LABOR.

It was assumed at the initial stage of this investigation that railroad materials and supplies had greatly advanced in price within the past few years. Investigation was accordingly had into this

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question, and to our surprise, it may be said, it was discovered through figures furnished by the carriers and their admissions that, with the exception of fuel and ties, railway supplies and materials are to-day costing the carriers less on the average than in any of the past ten years. President Gardiner, of the Chicago & North Western road, made the frank admission that so far as the increase in cost of materials and supplies is concerned, whatever advances there had been in some articles were offset by the decrease in others, so that in good conscience he could not urge this as a justification for increased rates. President Gardiner's testimony in this respect was as follows:

The cost of materials has been pretty constant. There are a great many things to-day that are cheaper than they were, and a great many things that we can buy a good deal cheaper than you have read off these lists, so far as I have heard them. Some things are constant, like rail. Ties are 5 cents higher. We have to substitute hemlock and pine at about the same price we used to pay for pine, but they do not last as long. And then, on the other hand, on manufactured articles, in the way of materials, the price is lower and they are better. We have an advantage there both ways. They manufacture better things and sell them at a lower price. And some other things are not as good as they used to be. I do not think there is much advantage or disadvantage in the price of materials.

With respect to the cost of fuel it appears to be the fact that more fuel was actually consumed during the winter of 1909-10 than ordinarily was required for the carrying of an equal volume of traffic. This was because of congestion at terminals and the prevalence of extremely heavy weather. Furthermore, a strike of coal miners took place during the winter, which left some of the roads unprepared to meet such an emergency, and the cost of fuel for a period was much increased. At the conclusion of this strike the coal operators, yielding in part to the demands of the men, increased the price of coal. So that it is uncontradicted before us that, the fuel cost, based on the ton of coal consumed, was higher in 1910 than it had been for several years preceding. It appears, further (and this has not been denied), that the cost of coal in the year 1911 will be higher than it has averaged for the preceding five years. Mine wages were advanced in 1910, and coal was correspondingly increased in price, and that increase obtains to-day and doubtless will for some time to come. At least this is the best judgment of those who should know the exact condition.

But this does not entirely dispose of the question of fuel cost. We have found the average fuel cost per train-mile for the years 1901-1905 and for the years 1906-1910 and compared these first one with another for the various carriers. Then we have taken the fuel cost per train-mile for the exceptionally high year of 1910 and compared that with the average for the first five years of the decade. These contrasts or

comparisons show a very great increase in the cost to a carrier for the fuel used in carrying a train 1 mile, whether we compare the averages for the two five-year periods, or the average for the first period with 1910. During this time, however, the average number of tons carried in a train, even of these lines, has greatly increased, excepting as to one small road. Thus we find that while on the Santa Fe road the fuel cost per train-mile for the five years 1906–1910 has increased by 15 per cent over 1901–1905, the tons in the train have increased 17 per cent. The Chicago & Alton's increase in cost of fuel has just been offset by its increased trainloads. The Chicago & North Western has been compelled to pay 20 per cent more in 1906–1910 than it did in 1901–1905 for fuel per train mile, while its trainload has increased but 5 per cent. The Burlington road, however, has so increased its tons per train that it has more than offset its increased cost of fuel on the train-mile basis. With the Milwaukee, however, this is not true, nor with the Rock Island road. The Iowa Central, however, shows efficiency in operation by so increasing its trainload as to make its fuel cost per ton-mile less. The Minneapolis & St. Louis, on the other hand, has been unable to increase its tonnage per trainload, showing an actual decrease.

These figures must be read with a knowledge of the policy of the roads as to the character of service attempted and given, as to the efficiency of the management, and the condition of the property. It is the policy of some roads to accumulate shipments until heavy trainloads are made. Other carriers seek to give prompt service without respect to the volume of traffic on a train. Still others are unable, because of poor equipment or heavy grades, to increase their trainload. There is no general conclusion to be drawn from this table which will be applicable to all carriers, but it probably is fair to say that as to the average road \$1 worth of fuel in the last five years in the decade would carry a ton of freight as far as it would in the first five years in the decade. This was not so in 1910, owing to the causes above indicated, the extreme bad weather, a shortage in fuel, and consequent increased cost. The carriers, however, we believe, must figure that coal will cost them slightly more on the average per ton in this year than the average for the last five years (at least 10 cents per ton), and this additional expense may be offset by heavier trainloads, or perhaps by less prompt service, the wisdom of the former policy being questionable, and the latter course being undesirable.

As to the increased cost in ties, while the standard white oak tie costs 5 or 10 cents more, the general increase in this expenditure is almost negligible, it being estimated from the reports furnished by the carriers that it will increase the cost of maintenance less than \$50 per mile of road per year.

The large item of increase in operating expenses upon which the carriers depend in their defense of these increased rates is that of increased wages arising out of settlements made with their employees in the spring of 1910. Definite figures have not been furnished us as to the yearly increase in expenditure necessitated by these new wage schedules; but from the statements made by various carriers the following table has been compiled showing in parallel columns the estimated increase in revenue arising from the proposed rates and the estimated wage increase:

Name of road.	Estimated increase in revenue.	Estimated wage increase.
Atchison, Topeka & Santa Fe.....	\$150,000	\$1,613,363
Chicago & North Western.....	260,711	571,902
Chicago, Burlington & Quincy.....	237,201	325,000
Chicago Great Western.....	46,140	175,000
Chicago, Milwaukee & St. Paul.....	750,000	484,653
Chicago, Rock Island & Pacific.....	142,669	1,298,447
Illinois Central.....	37,329	929,000
Wabash.....	812,379	668,770

Other increases have been made since the hearings had in this case, but we are without data as to their extent.

It appears that there have been constant increases during the past 10 years in the wages of employees on these western roads, the estimate for the Santa Fe alone showing that if the wage schedule of 1901 had been applied in 1910 the road would have saved over \$6,000,000. The Chicago & North Western presented schedules showing that wages have increased on that road since 1900 as follows: Trainmen, 20 to 26 per cent; engineers, 2.7 to 27 per cent; firemen, 38 per cent; train dispatchers, 45 to 53 per cent; telegraph operators, 16 to 36 per cent; road masters, 10 to 21 per cent; section foremen, 13 to 27 per cent; section laborers, 20 per cent; motive power department employees, 38 to 44 per cent; car department employees, 12 to 37 per cent.

EXPERIENCE OF SIX MONTHS.

The wage increases of 1910 were in effect during the six months from July 1 to December 31 of last year. We have prepared statements for each of the principal carriers herein involved showing a comparative statement for the five periods of six months each ending December 31, 1910. From a study of these we may be able to discern how well founded are the fears of the carriers as to the destructive influence of these new wage schedules. The first one we will consider is that of the Burlington.

Chicago, Burlington & Quincy Railroad Company—Totals.

Item.	Six months—				
	July 1-Dec. 31, 1908.	Jan. 1-June 30, 1909.	July 1-Dec. 31, 1909.	Jan. 1-June 30, 1910.	July 1-Dec.31, 1910.
Freight revenue.....	\$27, 446, 874. 90	\$24, 794, 045. 70	\$29, 572, 652. 62	\$28, 651, 884. 86	\$31, 762, 525. 93
Passenger revenue.....	10, 763, 427. 88	8, 821, 877. 14	12, 246, 340. 16	10, 133, 965. 67	12, 668, 435. 64
Total operating revenues....	41, 602, 595. 09	37, 010, 034. 27	45, 410, 617. 64	42, 458, 899. 60	48, 261, 260. 46
Maintenance of way and structures.....	6, 370, 643. 01	6, 616, 130. 26	8, 553, 390. 54	7, 172, 070. 66	6, 674, 322. 76
Maintenance of equipment...	6, 526, 201. 62	6, 840, 213. 46	7, 722, 788. 90	7, 334, 376. 49	7, 522, 970. 20
Transportation expenses.....	12, 444, 028. 30	12, 110, 703. 37	13, 482, 195. 07	14, 857, 856. 67	15, 044, 009. 81
Taxes.....	1, 275, 600. 00	1, 241, 417. 52	1, 293, 546. 82	1, 677, 189. 96	1, 502, 757. 82
Operating income.....	13, 149, 617. 56	8, 226, 589. 80	12, 342, 713. 15	9, 380, 820. 28	15, 563, 157. 92
Average mileage operated during period.....	9, 023. 20	9, 022. 62	9, 020. 82	9, 028. 48	9, 057. 47

From this table it appears that the freight revenue for the last half of the year 1910 has increased \$2,000,000 over that for the same six-months' period in 1909, and \$4,000,000 over that for the same period in 1908, while transportation expenses have increased a million and a half dollars over the last six months of 1909 and \$2,500,000 over the last six months of 1908. The operating income, which is the amount that the carrier receives for railroad transportation service and is the result of a deduction from the total operating revenues of all expenses, including taxes, has increased from \$12,342,000 to \$15,563,000. Transportation expenses have increased, it will be seen, over the 1909 period in but a slightly increased ratio as compared with the increase of operating revenues for 1910 over 1909. The increase in operating revenues, however, gives to the Burlington road during these six months a much higher revenue than it has enjoyed for any of the periods considered.

We now pass to a consideration of the table giving the averages per mile of road, from which it will be seen that the transportation expenses per mile of road during the last half of 1910 increased but \$15 per mile over the transportation expenses for the first half of that year, while the operating income is nearly \$700 per mile of road greater in the last half of the year than in the first half, and \$350 per mile greater than in the corresponding period for 1909.

Chicago, Burlington & Quincy Railroad Company.—Averages per mile of road.

Item.	Six months—				
	July 1-Dec. 31, 1908.	Jan. 1-June 30, 1909.	July 1-Dec. 31, 1909.	Jan. 1-June 30, 1910.	July 1-Dec. 31, 1910.
Freight revenue per mile of road.....	\$3, 041. 81	\$2, 747. 99	\$3, 278. 27	\$3, 173. 50	\$3, 506. 78
Passenger revenue per mile of road.....	1, 192. 86	977. 75	1, 357. 56	1, 122. 44	1, 398. 67
Total operating revenues per mile of road.....	4, 610. 63	4, 101. 92	5, 033. 98	4, 702. 77	5, 328. 34
Maintenance of way and structures per mile of road.....	706. 03	733. 28	948. 18	794. 38	736. 89
Maintenance of equipment per mile of road.....	723. 27	758. 12	856. 11	812. 36	830. 58
Transportation expenses per mile of road.....	1, 379. 11	1, 342. 26	1, 494. 56	1, 645. 67	1, 660. 95
Taxes per mile of road.....	141. 37	137. 59	143. 40	185. 77	165. 91
Operating income per mile of road.....	1, 457. 31	911. 77	1, 368. 25	1, 039. 03	1, 718. 27
Average mileage operated during period.....	9, 023. 20	9, 022. 62	9, 020. 82	9, 028. 48	9, 057. 47

The total operating revenues for the last six months of 1910 were about 12½ per cent greater than for the first six months, while the transportation expenses were practically no greater; and this is remarkable when it is considered that during the last six months of the year the full effect of the increase of wages was felt by the carriers.

We pass next to a consideration of the Rock Island.

The Chicago, Rock Island & Pacific Railway Company—Totals.

Item.	Six months—				
	July 1-Dec. 31, 1908.	Jan. 1-June 30, 1909.	July 1-Dec. 31, 1909.	Jan. 1-June 30, 1910.	July 1-Dec. 31, 1910.
Freight revenue.....	\$19,072,348.37	\$17,485,170.05	\$20,621,865.22	\$18,838,208.71	\$22,020,095.30
Passenger revenue.....	9,170,710.59	7,726,736.48	10,176,742.19	8,196,773.89	10,540,117.32
Total operating revenues....	30,016,508.07	27,370,338.70	32,673,625.06	29,559,169.39	34,522,984.17
Maintenance of way and structures.....	4,710,304.58	3,710,990.34	5,333,376.00	4,702,812.14	5,138,361.42
Maintenance of equipment...	3,828,325.78	3,356,119.37	4,052,195.35	4,026,753.53	4,531,668.57
Transportation expenses.....	10,769,161.37	10,693,278.43	11,429,459.31	12,418,751.45	12,626,366.98
Taxes.....	1,105,713.80	1,081,817.91	1,223,625.08	1,523,283.89	1,360,319.75
Operating income.....	8,125,112.48	6,958,986.18	8,971,318.24	4,890,132.94	9,029,998.64
Average mileage operated....	7,412.23	7,414.30	7,403.70	7,393.59	7,395.71

The Chicago, Rock Island & Pacific Railway Company—Averages per mile of road.

Item.	Six months—				
	July 1-Dec. 31, 1908.	Jan. 1-June 30, 1909.	July 1-Dec. 31, 1909.	Jan. 1-June 30, 1910.	July 1-Dec. 31, 1910.
Freight revenue per mile of road.....	\$2,573.09	\$2,358.30	\$2,785.35	\$2,547.91	\$2,977.41
Passenger revenue per mile of road.....	1,237.24	1,042.14	1,374.55	1,108.63	1,425.17
Total operating revenue per mile of road.....	4,049.59	3,691.56	4,413.15	3,997.95	4,667.97
Maintenance of way and structures.....	635.48	500.52	720.37	636.07	694.78
Maintenance of equipment per mile of road.....	516.49	452.65	547.32	544.63	612.74
Transportation expenses per mile of road.....	1,452.89	1,442.25	1,543.75	1,679.66	1,707.26
Taxes per mile of road.....	149.17	145.91	165.27	206.03	183.93
Operating income per mile of road.....	1,096.18	938.59	1,211.73	661.40	1,220.98
Average mileage operated during period.....	7,412.23	7,414.30	7,403.70	7,393.59	7,395.71

Here we see an increase of nearly \$2,000,000 in total operating revenues in the last half of 1910 over the corresponding period for 1909. The carrier has increased its maintenance charges by \$300,000. Comparing these two periods, transportation expenses have increased by nearly \$1,200,000 and the operating income is slightly higher than in the first half of the fiscal year 1910, which was the banner year in the history of that road. When we consider the averages per mile of road, we see that notwithstanding increases in wages and high maintenance charges the operating income per mile makes fully as good a record as in the last half of 1909.

Next we have the statement of the Milwaukee road:

Chicago, Milwaukee & St. Paul Railway Company—Totals.

Item.	Six months—				
	July 1-Dec. 31, 1908.	Jan. 1-June 30, 1909.	July 1-Dec. 31, 1909.	Jan. 1-June 30, 1910.	July 1-Dec. 31, 1910.
Freight revenue.....	\$22,884,057.57	\$19,457,593.05	\$23,496,525.84	\$21,412,610.70	\$24,607,403.31
Passenger revenue.....	7,162,550.44	5,612,301.49	7,870,385.41	6,916,359.02	7,836,014.67
Total operating revenues....	32,507,799.28	27,389,664.21	33,912,588.38	30,934,305.49	35,522,389.96
Maintenance of way and structures.....	4,106,104.33	3,182,498.35	4,867,287.49	3,605,537.90	4,914,575.71
Maintenance of equipment...	3,764,779.71	3,505,994.45	4,062,681.21	3,661,887.54	4,759,714.25
Transportation expenses.....	10,981,708.21	10,782,762.65	12,668,887.95	13,678,394.68	14,645,021.41
Taxes.....	1,188,855.37	1,239,820.24	1,233,128.11	1,296,244.97	1,303,001.74
Operating income.....	11,445,201.18	7,472,030.67	9,987,504.22	7,746,639.83	8,835,119.08
Average mileage operated during period.....	7,511.91	7,511.56	7,511.56	7,511.56	7,511.56

Chicago, Milwaukee & St. Paul Railway Company—Averages per mile of road.

Item.	Six months—				
	July 1-Dec. 31, 1908.	Jan. 1-June 30, 1909.	July 1-Dec. 31, 1909.	Jan. 1-June 30, 1910.	July 1-Dec. 31 1910.
Freight revenue per mile of road.....	\$3,046.37	\$2,590.35	\$3,128.05	\$2,850.62	\$3,275.94
Passenger revenue per mile of road.....	953.49	747.16	1,047.77	920.76	1,043.19
Total operating revenues per mile of road.....	4,327.50	3,646.34	4,514.72	4,118.23	4,729.03
Maintenance of way and structures per mile of road.....	546.61	423.68	647.97	480.00	654.27
Maintenance of equipment per mile of road.....	501.17	466.75	540.86	487.50	633.65
Transportation expenses per mile of road.....	1,461.91	1,435.49	1,686.59	1,820.98	1,949.66
Taxes per mile of road.....	158.26	165.05	164.16	172.57	173.47
Operating income per mile of road.....	1,523.61	994.74	1,329.62	1,031.30	1,176.20
Average mileage operated during period.....	7,511.91	7,511.56	7,511.56	7,511.56	7,511.56

The operating income of the Milwaukee for the last half of 1910 was over \$1,000,000 greater than for the first half of the same year, but is over \$1,100,000 less than for the last six months of 1909. The operating revenues increased \$4,500,000 in the last half of the year over the first half, and \$1,500,000 over the last half of 1909. Maintenance charges, we see, reached an unprecedented figure with this road, and transportation expenses were also correspondingly increased. The operating revenues show a slight advance per mile in the latter six months of 1910, but the operating income per mile shows a slight decrease, although it is to be noticed that the decrease of 1910 under 1909 is not so great as the decrease of the last half of 1909 under the last half of 1908, while the relation of transportation expenses is in practically the same ratio one six-months period with another. In order to earn \$4,729 the Milwaukee road expended for transportation, in which labor and fuel are the largest items, \$1,949 per mile of road for July 1 to December 31, 1910. In the first six months of the same year in order to earn \$4,118 the road expended \$1,820 for transportation expenses per mile. Expressed in percentage

this means that for the first half of 1910 the transportation expense was 44 per cent of the revenue, while for the last half of the same year under the new wage scale the transportation was only 41 per cent of the revenue. This shows that with the increased wage scale the carrier had to spend less money in transportation to earn \$1 of revenue. This seems to be generally true, however, contrasting the first half with the latter half of the year.

We next come to the North Western road.

Chicago & North Western Railway Company—Totals.

Freight revenue.....	\$23,227,764.63	\$20,391,326.65	\$26,055,745.23	\$23,481,093.95	\$26,549,047.48
Passenger revenue.....	9,428,673.50	7,446,994.93	10,141,306.90	8,289,711.57	10,546,169.52
Total operating revenues.....	35,333,129.12	30,645,341.91	39,166,191.58	35,010,493.11	40,579,807.25
Maintenance of way and structures.....	4,307,175.08	4,115,090.20	6,309,448.87	4,464,899.02	5,927,050.67
Maintenance of equipment.....	3,816,692.84	4,029,775.71	4,690,735.34	4,468,491.36	4,892,638.05
Transportation expenses.....	12,486,828.77	12,180,033.78	14,368,816.25	15,306,538.00	15,964,556.71
Taxes.....	1,380,000.00	1,334,681.79	1,368,000.00	1,611,512.52	1,620,000.00
Operating income.....	12,266,601.83	7,791,091.41	11,108,054.17	7,877,557.79	10,696,009.14
Average mileage operated during period.....	7,633.42	7,634.76	7,637.97	7,636.54	7,691.13

The total operating revenues increased approximately \$1,500,000 in the last half of 1910 over the same period for 1909, while the operating income was less in 1910 than in 1909.

Chicago & North Western Railway Company—Averages per mile of road.

Item.	Six months—				
	July 1— Dec. 31, 1908.	Jan. 1— June 30, 1909.	July 1— Dec. 31, 1909.	Jan. 1— June 30, 1910.	July 1— Dec. 31, 1910.
Freight revenue per mile of road.....	\$3,042.90	\$2,670.85	\$3,411.54	\$3,074.83	\$3,451.90
Passenger revenue per mile of road.....	1,235.18	975.41	1,327.75	1,065.53	1,371.21
Total operating revenues per mile of road.....	4,628.74	4,013.92	5,127.70	4,584.60	5,276.18
Maintenance of way and structures per mile of road.....	564.26	538.99	826.06	584.67	770.63
Maintenance of equipment per mile of road.....	500.00	527.75	612.82	584.11	610.14
Transportation expenses per mile of road.....	1,635.51	1,596.34	1,881.23	2,004.64	2,078.31
Taxes per mile of road.....	180.78	174.81	179.11	211.03	210.63
Operating income per mile of road.....	1,806.83	1,020.49	1,454.32	1,031.56	1,415.40
Average mileage operated during period.....	7,633.42	7,634.76	7,637.97	7,636.54	7,691.13

Considering this table, we see that while in the last half of 1909 transportation expenses were \$1,881 per mile, which brought in a revenue of \$5,127; a year later it required \$2,078 (an increase of nearly \$200 per mile) to produce an operating revenue of \$5,276 (an increase of \$150 per mile). It would be unfair to compare the transportation expenses with the operating revenue for the first half of 1910 as to this road, because of its unfortunate condition during the early months of the winter.

Below are given the corresponding tables for the Illinois Central:

Illinois Central Railroad Company—Totals.

Freight revenue.....	\$18,445,068.47	\$17,558,828.82	\$19,466,206.24	\$19,311,462.21	\$20,906,135.46
Passenger revenue.....	5,754,359.47	5,110,999.51	6,193,510.45	5,687,503.19	6,396,462.74
Total operating revenues....	27,568,003.16	26,104,333.12	29,150,275.40	28,734,445.69	31,394,419.35
Maintenance of way and structures.....	3,403,773.56	2,792,513.03	4,369,137.85	3,238,753.58	4,102,102.16
Maintenance of equipment ..	6,308,409.54	4,957,217.54	6,794,227.03	6,708,022.69	6,396,421.89
Transportation expenses....	9,263,001.78	9,354,939.98	9,547,299.36	10,187,611.17	10,394,747.15
Taxes.....	1,132,756.23	1,144,212.93	1,318,082.95	1,206,815.73	1,246,590.88
Operating income.....	6,278,463.70	6,669,471.16	5,871,280.08	6,133,393.71	7,229,560.80
Average mileage operated during period.....	4,544.29	4,550.54	4,550.54	4,550.54	4,550.54

Illinois Central Railroad Company—Averages per mile of road.

Item.	Six months—				
	July 1— Dec. 31, 1908.	Jan. 1— June 30, 1909.	July 1— Dec. 31, 1909.	Jan. 1— June 30, 1910.	July 1— Dec. 31, 1910.
Freight revenue per mile of road.....	\$4,058.95	\$3,858.63	\$4,277.80	\$4,243.77	\$4,593.99
Passenger revenue per mile of road.....	1,266.29	1,123.16	1,361.06	1,249.85	1,503.00
Total operating revenues per mile of road.....	6,066.51	5,736.54	6,405.89	6,314.51	6,899.05
Maintenance of way and structures per mile of road.....	749.02	613.67	960.14	711.73	901.67
Maintenance of equipment per mile of road.....	1,388.21	1,089.37	1,493.08	1,474.12	1,408.44
Transportation expenses per mile of road.....	2,038.38	2,055.79	2,096.06	2,238.77	2,284.29
Taxes per mile of road.....	249.27	251.45	290.65	266.20	273.94
Operating income per mile of road.....	1,361.18	1,465.64	1,290.24	1,347.84	1,742.55
Average mileage operated during period.....	4,544.29	4,550.54	4,550.54	4,550.54	4,550.54

The operating income of this road during the last six months of 1910 has increased by more than \$2,000,000 over the corresponding six months for 1909. Its transportation expenses were only \$800,000 more in the later period. Following down through these tables we notice that maintenance charges are but slightly less in the 1910 period while operating income is nearly \$500 per mile more, notwithstanding the increase in wages.

The Atchison, Topeka & Santa Fe Railway Company—Totals.

Item.	Six months—				
	July 1—Dec. 31, 1908.	Jan. 1—June 30, 1909.	July 1—Dec. 31, 1909.	Jan. 1—June 30, 1910.	July 1—Dec. 31, 1910.
Freight revenue.....	\$25,779,944.15	\$26,114,441.17	\$29,564,421.09	\$28,983,797.35	\$30,533,416.84
Passenger revenue.....	9,197,496.87	9,312,341.16	10,425,062.60	10,723,293.03	11,521,419.97
Total operating revenues....	37,927,551.56	38,843,106.54	43,324,890.76	42,646,482.24	45,614,709.56
Maintenance of way and structures.....	4,787,819.67	5,282,461.87	7,019,740.58	7,047,660.40	6,612,277.52
Maintenance of equipment....	6,297,492.84	5,129,823.35	6,351,196.71	6,528,701.31	6,321,354.72
Transportation expenses.....	17,024,854.29	10,613,935.54	11,794,055.30	13,585,010.85	12,728,823.75
Taxes.....	1,164,262.19	1,453,543.98	1,585,242.79	1,864,898.25	1,416,818.52
Operating income.....	14,053,139.07	14,718,845.42	14,813,309.86	12,762,702.58	16,043,009.35
Average mileage operated during period.....	7,462.00	7,458.43	7,458.80	7,459.24	7,547.40

The Atchison, Topeka & Santa Fe Railway Company—Averages per mile of road.

Item.	Six months—				
	July 1– Dec. 31, 1908.	Jan. 1– June 30, 1909.	July 1– Dec. 31, 1909.	Jan. 1– June 30, 1910.	July 1– Dec. 31, 1910.
Freight revenue per mile of road.....	\$3,454.55	\$3,501.33	\$3,963.70	\$3,885.62	\$4,045.55
Passenger revenue per mile of road.....	1,232.48	1,248.57	1,397.68	1,438.93	1,526.54
Total operating revenues per mile of road.....	5,082.35	5,207.95	5,808.55	5,851.33	6,043.77
Maintenance of way and structures per mile of road.....	641.58	708.25	941.14	944.82	876.10
Maintenance of equipment per mile of road.....	843.86	687.79	852.84	874.58	903.80
Transportation expenses per mile of road.....	1,351.36	1,423.08	1,581.23	1,821.23	1,712.31
Taxes per mile of road.....	156.01	194.75	212.53	249.97	187.72
Operating income per mile of road.....	1,883.14	1,973.45	1,986.02	1,710.99	2,125.63
Average mileage operated during period.....	7,462.60	7,458.43	7,458.80	7,459.24	7,547.40

The Santa Fe shows an increase in operating income of \$1,200,000 for the six months period 1910 over 1909—an increase on the per-mile basis of from \$1,986 to \$2,125, and this notwithstanding maintenance charges in 1910 were greater than those in 1909. To earn \$43,000,000 in 1909 the transportation expense was \$11,800,000. In 1910 to earn \$45,600,000 required a transportation expense of \$12,900,000. For the first half of 1910, however, the expenses for transportation were extraordinarily heavy, being much above the ratio to operating revenue that we find them to be for the last half of the same year. The transportation expense per mile for the last six months of 1909 was 27 per cent of the total operating revenue, while for the corresponding six months of 1910 it was 28 per cent. At the same time the transportation expense per mile for the last six months of 1910 compared with the first six months of the same year showed a decrease of 6 per cent and the revenues increased 4 per cent. This clearly indicates that the increase in the rate of wages and fuel has not placed any undue burden upon this company so far as earning a dollar of revenue is concerned.

The carriers have passed through the period of immediate experiment under these added costs and found that there is promise of a continuance of the prosperity this year which was theirs in 1910. These six months figures establish beyond reasonable doubt, taking the carriers as a whole, that the increase in wages does not come out of net but comes out of an increased gross.

We have treated the Santa Fe and Burlington as standard roads throughout this inquiry by which to make measurement. Certainly the reports which they have now made for the probationary six months do not cry out with injustice against the perpetuation of existing rates; they do not make apparent that these roads are, as one witness imaginatively stated, being forced into the arms of a receiver.

At the close of the six months July 1 to December 31, 1910, these six carriers had a larger income from operations by over \$5,000,000

than they enjoyed in the corresponding six months of 1909, and \$20,000,000 more than in the first half of 1910.

Operating income.

Name of road	July 1-Dec. 31, 1908.	Jan. 1-June 30, 1909.	July 1-Dec. 31, 1909.	Jan. 1-June 30, 1910.	July 1-Dec. 31, 1910.
Chicago, Burlington & Quincy.	\$13,149,617.56	\$8,226,589.80	\$12,342,713.15	\$9,380,820.28	\$15,563,157.92
Chicago, Rock Island & Pacific.	8,125,112.48	6,958,986.18	8,971,318.24	4,890,132.94	9,029,998.64
Chicago, Milwaukee & St. Paul.	11,445,201.18	7,472,030.67	9,987,504.22	7,746,639.83	8,835,119.08
Chicago & North Western....	12,265,601.88	7,791,091.41	11,108,054.17	7,877,557.79	10,886,009.14
Illinois Central	6,276,463.70	6,669,471.16	5,871,280.08	6,133,393.71	7,929,560.80
Atchison, Topeka & Santa Fe.	14,053,129.07	14,718,845.42	14,813,309.86	12,762,702.58	16,043,009.35
Total.....	65,315,125.87	51,837,014.64	63,094,179.72	48,791,247.13	68,286,854.93

How much more are these railroads entitled to for the same service in the year 1911 than they were in 1910 or 1909? Are they to have the benefit of all increase in traffic, as well as of economies which they make, and the shipping public bear every added expense? If these increased rates are to be allowed, must we not say, with Mr. Ripley, that in the past all rates have been too low and that by force of our power to protect these carriers against intense competition between each other we will aid in the raising of rates onto a higher level?

THE POORER ROADS.

A strong plea is made on behalf of what are known as the poorer roads in this territory, among them the Minneapolis & St. Louis and Iowa Central lines. It is almost axiomatic that rates can not be made so as to give high earnings to a poorly placed, indifferently operated, or isolated road without making the rates absolutely extortionate. The rate per ton per mile on the Minneapolis & St. Louis is higher than on any other line in that territory, and yet its operating income per mile of road operated only averaged \$1,500 for the last 10 years. It paid an average interest of \$1,050,801 during these 10 years on a funded debt of \$21,991,824, or about 5 per cent. In other words, it paid 5 per cent on a valuation of approximately \$30,000 per mile. Its operating income of \$1,222,698 average for the 10-year period yielded about 6 per cent on a valuation of \$30,000 a mile.

The Iowa Central, which had an average owned mileage of 502 miles, for the 10-year period paid an average interest of \$565,049 per year on a funded debt of \$12,314,580. Its operating income from railroad operation was about the same as the amount paid out for interest. This yielded approximately 5 per cent upon a valuation of \$25,000 a mile.

There is no way by which such a condition can be remedied unless the Government makes a direct appropriation for the support of roads in this condition. They stand alone, unconnected with any great system and unable to command traffic at either end of their lines. Assuming that the rates were raised to a point far beyond their present standard, the strong competitors of these lines would be able to command the business, and there is no reason to believe that such increase would give the weaker lines more than a small percentage of increase in operating income.

IN CONCLUSION.

The strength of the carriers' case is in these two contentions: (1) That the roads are not earning a fair return upon the value of their property; (2) that the cost of operating has increased because of increased wages. It is true that cost of operation has increased by the amount shown as allowed to labor and addition to wages. But it is also true that operating revenues have increased so as to more than absorb increased operating expenses, as is shown in the six months' statement above. Moreover, cost figures furnished would indicate that under skillful management an additional tonnage may be handled under a higher wage schedule without increasing the cost of the service given.

It now appears probable that at the end of the fiscal year 1911 the carriers here involved will in the main enjoy earnings as high as those they had in 1910—the highest year in their history. Let us assume that this increase in rates were attempted in 1911 and that Congress, in June, 1911, had passed that amendment to section 15 of the act to regulate commerce with which this report opens and under which the burden of proof to establish the reasonableness of increased rates is laid upon the carrier proposing the same, and that at the close of one of the most prosperous years in their history the carriers had attempted to increase these rates, would the Commission justify such increases upon the grounds herein advanced? There can be but one answer to this question.

These commodity rates already pay their due share of the value of the service rendered by the carriers. Many of them in fact are now twice as high for the haul immediately west of Chicago as corresponding rates for a similar haul immediately east of Chicago.

The Constitution of the United States guarantees the carriers against the confiscation of their property or the taking of the same without due process of law. Without this constitutional guaranty, which is distinctively American—for here property rights are more

sacredly safeguarded than in other lands of more mobile law—the railroads of our country are protected from injury of any lasting character by the popular consciousness that they are essential to the industrial life of the people. To harm these roads is to injure ourselves. Our laws do not seek to establish dominion over private capital for any other purpose than to make sure against injustice being done the public, and thereby make such capital itself more secure. We are dealing here with a difficult problem, involving multitudinous facts and an infinite variety of modifying conditions, which make the establishment of principles and the framing of policies a matter of slow evolution. Congress has laid down a few rules. These rules we are attempting to apply. It is not for us to say that we represent the Government and may have a policy of our own which in any degree runs counter to the power granted to us or the duty imposed upon us. The railroads may not look to this tribunal to negative or modify the expressed will of the legislature. They have laid before us the facts and law which would make for a justification of their course in the increasing of rates. To our minds their justification has not been convincing.

We do not say that the carriers may not increase their income. We trust they may, and confidently believe they will. If the time does come when through changed conditions it may be shown that their fears are realized, or approaching realization, and from a survey of the whole field of operations there is evidence of a movement which makes against the security and lasting value of legitimate investment and an adequate return upon the value of these properties, this Commission will not hesitate to give its sanction to increases which will be reasonable. It is the law that rates shall be just and reasonable, and alike to all for like service. In construing this law the courts have given general direction in a number of cases, and by all standards that have been set this Commission—all of its members concurring—finds the proposed rates to be beyond the limitations placed by law upon the carriers.

We shall ask the carriers to withdraw the proposed tariffs forthwith through their agents and attorneys in fact who have filed them. If such action is not taken on or before March 10, 1911, the Commission will further suspend these rates, make appropriate finding, and issue an order directing the maintenance of the present rates for a period of two years from that date.

APPENDIX A.

Name of road.	Average per single-track mile owned.			
	Total capital.	Funded debt.	Common stock.	Preferred stock.
Year ending June 30, 1910.				
Atchison, Topeka & Santa Fe.....	\$84,836	\$43,838	\$24,144	\$16,654
Chicago, Rock Island & Pacific.....	53,204	38,817	14,387	.....
Chicago & North Western.....	47,933	27,304	17,645	2,984
Chicago, Burlington & Quincy.....	36,338	23,779	12,559	.....
Chicago & Alton.....	125,629	81,113	20,043	24,473
Chicago, Milwaukee & St. Paul.....	38,820	20,537	11,424	6,859

Name of road.	Average rate of interest on funded debt.	Dividends on preferred stock.		Ratio of balance of corporate income (after deduction of dividends on preferred stock) to common stock outstanding.
		Amount.	Rate of declaration.	
Year ending June 30, 1910.				
Atchison, Topeka & Santa Fe.....	3.88	\$5,708,690	5	8.92
Chicago, Rock Island & Pacific.....	3.98	(¹)	.....	6.59
Chicago & North Western.....	3.70	1,791,600	8	8.04
Chicago, Burlington & Quincy.....	4.05	(¹)	.....	12.61
Chicago & Alton.....	■	781,760	4	1.25
Chicago, Milwaukee & St. Paul.....	3.75	157,122	6	
		128,030	7	
		8,115,233	7	7.53

¹ Basis includes mileage of proprietary companies.² No preferred stock outstanding.³ Based on \$282,664,800, which omits \$99,492,800 of capital issued to provide funds for the construction and equipment of the Chicago, Milwaukee & Puget Sound Ry. Co.

Year ended June 30—	Average mileage operated.	Gross earnings from operation.	Operating expenses.	Operating ratio.	Net earnings.
<i>Atchison, Topeka & Santa Fe Ry. Co.</i>					
1910.....	7,459.03	\$86,971,313	\$55,945,465	64.33	\$31,025,848
1909.....	7,480.51	78,770,668	43,381,887	55.11	31,388,781
1908.....	7,100.66	75,574,382	47,974,888	63.49	27,599,494
1907.....	6,909.03	75,792,605	45,749,246	60.36	30,043,359
1906 ¹	6,883.65	67,119,993	39,910,941	59.46	27,209,052
1905 ¹	6,860.18	58,802,410	37,930,654	64.50	20,871,756
1904 ¹	6,351.73	54,714,717	32,829,420	60.01	21,885,297
1903 ¹	6,168.29	49,701,345	29,091,091	58.53	20,610,254
1902.....	4,819.68	37,120,290	19,339,274	52.10	17,781,016
1901.....	4,815.00	34,966,188	18,023,443	51.55	16,942,745

Year ended June 30—	Miscellaneous income.	Net income.	Taxes.	Fixed charges.	Net profits.
<i>Atchison, Topeka & Santa Fe Ry. Co.</i>					
1910.....	\$6 22	\$37,183,570	\$3,449,836	\$1 14	\$20,470,530
1909.....	6 28	37,396,509	2,616,806	1 54	20,407,139
1908.....	2 30	30,233,714	2,789,919	1 21	13,914,874
1907.....	6 33	36,359,992	2,127,508	1 59	21,418,925
1906 ¹	4 02	32,031,654	1,955,071	1 13	17,534,670
1905 ¹	4 31	25,227,287	1,774,207	1 52	11,780,886
1904 ¹	6 76	27,640,173	1,539,622	1 05	15,436,446
1903 ¹	4 56	25,448,710	1,480,081	1 51	13,975,966
1902.....	8 37	26,311,763	1,436,135	1 15	15,731,708
1901.....	16 20	23,514,365	1,279,434	1 06	13,404,823

¹ Includes Atchison, Topeka & Santa Fe Ry. Co. coast lines, whose returns were reported separately to the Interstate Commerce Commission.² Includes net income from operation of Santa Fe Pacific R. R. and San Francisco & San Joaquin Valley Ry., whose operations were merged with those of the Atchison beginning on July 1, 1902.

Year ended June 30—	Dividends on stock.				Balance.
	Preferred.		Common.		
	Rate.	Amount.	Rate.	Amount.	
<i>Atchison, Topeka & Santa Fe Ry. Co.</i>					
	<i>Per ct.</i>		<i>Per ct.</i>		
1910.....	5	\$5,708,000	5	30	\$5,113,800
1909.....	5	5,708,000	5	5	9,005,800
1908.....	5	5,708,000	2½	2	2,543,576
			3	3	
1907.....	5	5,708,000	2½	2	10,055,203
			3	3	
1906 ¹	7½	8,563,035	4	4	5,182,415
1905 ¹	5	5,708,000	4	4	1,903,988
1904 ¹	5	5,708,000	4	4	5,649,536
1903 ¹	5	5,708,000	4	4	4,189,068
1902.....	5	5,708,000	4	4	5,944,793
1901.....	5	5,708,000	1½	1	8,166,810

Year ended June 30—	Average mileage operated.	Gross earnings from operation.	Operating expenses.	Operating ratio.	Net earnings.
<i>Chicago, Burlington & Quincy R. R. Co.</i>					
1910.....	9,023.08	\$8 109	\$6 729	Per ct. 72.14	\$24,694,270
1909.....	9,023.09	7 187	5 161	69.87	23,893,225
1908.....	8,977.25	7 155	5 190	71.13	22,600,863
1907.....	8,863.40	8 186	5 59	69.70	24,280,797
1906.....	8,608.26	7 772	4 172	67.04	23,752,300
1905.....	8,562.70	6 102	3 109	61.67	24,563,193
1904.....	8,322.50	6 147	3 150	62.76	23,404,397
1903.....	8,305.05	6 108	3 119	59.53	24,612,899
1902.....	7,941.37	5 31	3 104	61.90	19,925,037
1901.....	7,753.13	4 153	3 137	63.86	17,673,726

Year ended June 30—	Miscellaneous income.	Net income.	Taxes.	Fixed charges.	Net profits.
<i>Chicago, Burlington & Quincy R. R. Co.</i>					
1910.....	\$2, 008	\$37,317,968	\$2,970,737	\$10,371,606	\$13,975,625
1909.....	32	24,809,558	2,517,018	9,245,630	13,046,910
1908.....	2, 182	24,624,247	2,455,968	10,165,195	12,003,064
1907.....	1, 112	25,547,709	2,814,067	8,891,309	13,842,343
1906.....	1, 180	24,892,580	2,018,494	9,123,481	13,750,595
1905.....	10	25,450,308	1,840,627	8,849,746	14,759,935
1904.....	181	24,168,348	1,962,182	8,648,130	13,558,036
1903.....	159	25,442,848	1,748,006	8,835,812	14,858,941
1902.....	74	20,876,211	1,614,572	8,374,412	10,886,227
1901.....	1, 009	18,791,495	1,616,551	8,809,243	8,365,701

Year ended June 30—	Dividends on stock.				Balance.	
	Preferred.		Common.			
	Rate.	Amount.	Rate.	Amount.		
Chicago, Burlington & Quincy R. R. Co.						
1910.....			Per ct.	\$8	26	\$5,108,492
1909.....			8	8	28	4,179,793
1908.....			6	6	46	} 3,514,410
1907.....			8	8	28	
1906.....			7	7	37	6,083,606
1905.....			7	7	37	5,991,848
1904.....			7	7	37	7,001,193
1903.....			7	7	37	5,899,290
1902.....			7	7	56	7,100,486
1901.....			6½	7	63	3,411,164
1900.....			6½	6	58	2,013,143

¹ Includes Atchison, Topeka & Santa Fe Ry. Co. coast lines, whose returns were reported separately to the Interstate Commerce Commission.

² Debit balance.

Year ended June 30—	Average mileage operated.	Gross earn- ings from operation.	Operating expenses.	Oper- ating ratio.	Net earnings.
<i>Chicago & North Western Ry. Co.</i>					
1910.....	7,630.45	\$ 105	\$ 181	<i>Per ct.</i> 70.65	\$
1909.....	7,635.49	52	127	64.77	
1908.....	7,630.84	187	177	66.09	
1907.....	7,550.04	109	166	64.02	
1906.....	7,428.77	119	161	62.70	
1905.....	7,408.13	126	179	64.72	
1904.....	7,403.97	121	114	65.88	
1903.....	6,456.91	167	180	62.50	
1902.....	5,793.20	95	185	61.35	
1901.....	5,538.90	74	187	60.00	

Year ended June 30—	Miscella- neous income.	Net income.	Taxes.	Fixed charges.	Net profits.
<i>Chicago & North Western Ry. Co.</i>					
1910.....	\$ 62	\$24,422,126	\$ 13	\$ 173	\$12,441,240
1909.....	68	25,300,228	23	100	14,124,636
1908.....	76	24,449,886	23	172	13,864,191
1907.....	13	26,385,026	34	126	15,965,666
1906.....	77	25,721,935	77	105	15,028,083
1905.....	56	21,522,303	77	104	10,642,823
1904.....	68	20,042,605	65	159	9,625,341
1903.....	87	20,789,124	96	181	10,751,946
1902.....	41	19,927,551	66	157	10,810,339
1901.....	19	19,022,746	77	106	10,145,663

Year ended June 30—	Dividends on stock.				Balance.
	Preferred.		Common.		
	Rate.	Amount.	Rate.	Amount.	
<i>Chicago & North Western Ry. Co.</i>	<i>Per ct.</i>		<i>Per ct.</i>		
1910.....	8	\$1 00	7	\$1 00	\$2
1909.....	8	1 30	7	6 08	5
1908.....	8	1 30	7	6 72	5
1907.....	8	1 30	7	6 78	8
1906.....	8	1 00	7	4 12	3
1905.....	8	1 30	7	3 24	5
1904.....	8	1 00	7	3 24	4
1903.....	8	1 00	7	2 14	5
1902.....	8	1 00	7	2 68	6
1901.....	7	1 50	6	2 44	6

Year ended June 30—	Average mileage operated.	Gross earnings from operation.	Operating expenses.	Operating ratio.	Net earnings.
<i>Chicago, Milwaukee & St. Paul Ry. Co.</i>					
1910.....	7,511.55	\$4 81	\$4 84	Per ct. 69.53	\$20,263,517
1909.....	7,511.73	4 82	3 34	65.17	21,345,808
1908.....	7,499.23	4 84	3 14	65.01	20,254,080
1907.....	7,373.50	4 84	3 75	63.70	21,974,579
1906.....	7,185.40	4 84	3 76	61.62	21,225,458
1905.....	7,122.15	4 80	3 81	60.66	19,574,729
1904.....	7,011.87	4 80	2 80	61.71	18,461,830
1903.....	6,795.91	4 86	2 05	62.38	17,891,431
1902.....	6,754.83	4 82	2 08	62.30	17,157,624
1901.....	6,573.66	4 79	2 85	61.84	16,129,994
<i>Chicago, Milwaukee & Puget Sound Ry. Co.</i>					
1910 ¹	1,424.29	11,166,387	5,637,714	49.00	5,528,673

Year ended June 30—	Miscellaneous income.	Net income.	Taxes.	Fixed charges.	Net profits.
<i>Chicago, Milwaukee & St. Paul Ry. Co.</i>					
1910.....	\$7,799,486	\$1 03	\$2,655,802	\$1 09	\$16,744,832
1909.....	1,318,472	1 80	2,428,676	1 04	13,112,300
1908.....	1,328,670	2 80	2,304,962	1 38	12,555,460
1907.....	1,264,459	2 88	2,286,097	1 97	13,988,644
1906.....	571,036	2 84	1,730,729	1 65	13,323,230
1905.....	558,927	2 86	1,632,333	1 97	11,858,826
1904.....	608,000	1 80	1,600,732	1 98	10,718,400
1903.....	795,209	1 80	1,470,115	1 56	10,473,269
1902.....	700,579	1 03	1,400,161	1 84	9,640,458
1901.....	441,664	1 88	1,403,644	1 58	8,183,156
<i>Chicago, Milwaukee & Puget Sound Ry. Co.</i>					
1910 ¹	709,872	6,238,545	240,341	3,742,764	2,255,440

Year ended June 30—	Dividends on stock.				Balance.
	Preferred.		Common.		
	Rate.	Amount.	Rate.	Amount.	
<i>Chicago, Milwaukee & St. Paul Ry. Co.</i>					
	<i>Per ct.</i>		<i>Per ct.</i>		
1910.....	7	\$8,115,233	7	\$1 20	\$512,379
1909.....	7	3,406,348	7	1 56	3,796,886
1908.....	7	3,490,543	7	1 97	3,247,410
1907.....	7	3,479,063	7	4 86	5,571,266
1906.....	7	3,482,903	7	4 73	5,787,464
1905.....	7	3,400,523	7	4 73	4,355,480
1904.....	7	3,345,006	7	4 73	3,299,919
1903.....	7	3,291,883	7½	4 92	2,817,584
1902.....	7	3,164,448	6	3 71	3,055,839
1901.....	7	2,861,068	5½	2 28	2,728,975
<i>Chicago, Milwaukee & Puget Sound Ry. Co.</i>					
1910¹.....					2,255,440

¹ Figures from report for 11 months ending June 30, 1910, which is the first complete report filed by this company.

Year ended June 30—	Average mileage operated.	Gross earnings from operation.	Operating expenses.	Operating ratio.	Net earnings.
<i>Chicago, Rock Island & Pacific Ry. Co.</i>					
1910.....	7,400.33	\$4,286	\$46,036,926	73.49	\$16,008,269
1909.....	7,407.54	4,282	40,491,751	70.10	17,271,681
1908.....	7,384.50	4,233	39,941,668	72.62	15,058,866
1907.....	6,973.18	4,146	36,757,082	67.35	17,815,784
1906.....	6,718.06	4,127	32,694,074	67.83	15,507,733
1905.....	6,731.90	4,130	28,670,750	68.50	13,183,280
1904.....	5,909.42	4,132	26,733,975	71.71	10,548,357
1903.....	5,500.56	4,149	22,307,072	61.71	13,841,477
1902.....	3,935.93	4,108	17,111,229	89.97	11,423,579
1901.....	3,772.37	4,199	16,399,753	63.27	9,521,446

Year ended June 30—	Miscellaneous income.	Net income.	Taxes.	Fixed charges.	Net profits.
<i>Chicago, Rock Island & Pacific Ry. Co.</i>					
1910.....	\$2,720,214	\$19,328,574	\$2,746,909	\$1 5	\$4,939,369
1909.....	1,906,661	19,178,292	2,187,532	1 6	5,944,684
1908.....	2,617,345	17,675,910	1,693,047	1 8	4,522,545
1907.....	2,850,933	20,666,717	1,588,369	1 9	8,640,469
1906.....	2,491,190	17,996,943	1,588,460	9	6,757,224
1905.....	2,470,582	15,653,862	1,572,804	5	4,930,866
1904.....	3,615,647	14,164,004	1,315,043	5	6,290,615
1903.....	2,419,802	10,261,279	1,089,695	2	8,227,672
1902.....	2,060,497	13,484,076	931,321	5	6,114,638
1901.....	835,517	10,356,963	948,189	5	5,306,519

Year ended June 30—	Dividends on stock.				Balance.
	Preferred.		Common.		
	Rate.	Amount.	Rate.	Amount.	
<i>Chicago, Rock Island & Pacific Ry. Co.</i>	<i>Per ct.</i>		<i>Per ct.</i>		
1910.....			6	17,900	\$1,188,449
			5	13,060	
1909.....			6	8,418	2,006,362
			5½	29,914	
1908.....			6	8,418	594,342
			5½	29,765	
1907.....			6	8,508	4,515,143
			5½	16,728	
1906.....			6	9,288	2,070,383
			6½	77,553	
1905.....			6	9,633	244,836
			6½	78,622	
1904.....			6	10,938	294,617
			8	5,965,060	
1903.....			6½	4,680,767	3,545,905
1902.....			4	2,372,732	
1901.....			4	1,999,715	3,805,804

Year ended June 30--	Average mileage operated.	Gross earnings from operation.	Operating expenses.	Operating ratio.	Net earnings.
<i>Chicago & Alton R. R. Co.</i>					
1910.....	\$995.08	\$1 79	\$8 181	Per ct. 11.08	\$4,701,208
1909.....	993.08	1 134	7 106	9.65	5,082,428
1908.....	993.88	1 137	7 152	11.26	4,436,585
1907.....	970.33	1 191	7 154	11.20	4,920,997
1906.....	970.33	1 149	7 152	12.36	4,116,457
1905 ¹	915.23	1 109	7 123	12.45	4,548,886
1904 ¹	915.23	1 173	7 150	12.70	4,269,368
1903 ¹	915.41	1 192	6 74	12.04	3,741,918
1902 ¹	919.64	1 139	5 177	10.40	3,367,162
1901 ¹	919.64	1 156	5 151	12.27	3,540,905

Year ended June 30--	Miscellaneous income.	Net income.	Taxes.	Fixed charges.	Net profits.
<i>Chicago & Alton R. R. Co.</i>					
1910.....	\$66,025	\$4,767,323	\$447,434	\$3,007,726	\$1,312,163
1909.....	143,259	5,225,687	380,153	2,938,249	1,907,285
1908.....	83,354	4,519,939	356,733	2,601,271	1,561,935
1907.....	91,999	5,012,896	369,000	2,575,311	2,068,585
1906.....	303,982	4,420,439	354,180	2,809,492	1,256,767
1905 ¹	290,786	4,839,672	345,000	2,844,831	1,649,841
1904 ¹	192,254	4,461,637	340,000	2,843,087	1,277,950
1903 ¹	209,762	3,951,680	345,000	2,632,561	974,119
1902 ¹	-641	3,366,521	345,000	2,143,513	878,008
1901 ¹	12,440	3,553,345	330,427	1,980,494	1,242,434

Year ended June 30--	Dividends on stock.				Balance.
	Preferred.		Common.		
	Rate.	Amount.	Rate.	Amount.	
<i>Chicago & Alton R. R. Co.</i>					
1910.....	<i>Per ct.</i> 4	\$781,760	<i>Per ct.</i> 2	\$390,866	} \$163,599
	6	157,122	7	7,994	
	7	128,030			
1909.....	4	781,760	4	781,712	} 33,293
	6	105,000	7	7,994	
	7	128,030			
1908.....	8	69,496			} 299,766
	4	781,760	1	196,428	
	5	43,965	7	7,994	
1907.....	6	105,000	7	7,944	1,010,229
	7	128,030			
	4	817,332			
1906.....	6	799,746	7	22,999	200,737
	7	128,285			
	7	128,541			
1905 ¹	4	781,760	7	30,009	709,631
	7	128,541	7		
	4	781,760	7		
1904 ¹	7	128,541	7		337,640
	4	781,760			
	7	128,541	7		
1903 ¹	4	781,760	7		33,809
	7	128,541			
	4	781,760	7		
1902 ¹	7	128,541	7		162,302
	4	781,760			
	7	128,541	(²)	7,484	
1901 ¹	4	781,760	7	30,009	294,640

¹ Figures cover Chicago & Alton Railway Co., consolidated on March 14, 1905, with Chicago & Alton Railroad Co., forming Chicago & Alton Railroad Co., a new corporation.

² Debit balance.

³ Rate not available.

APPENDIX B.

ATCHISON, TOPEKA & SANTA FE EXHIBIT.

Cost and statistics of freight operation, Illinois division, year of 1910 and 1909.

Accounts.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Maintenance of way and structures.....	\$425,347.74	\$252,972.62	\$29,299.21	\$27,013.89	\$454,646.95	\$279,986.51
Maintenance of equipment....	579,736.15	562,208.54	20,858.34	20,490.16	600,594.49	582,698.70
Traffic expenses.....	68,637.87	59,609.90	2,361.33	1,937.82	70,999.20	61,547.72
Transportation expenses:						
Station service—						
Station employees.....	77,955.29	72,035.07	9,092.66	8,489.72	87,047.95	80,524.79
Station supplies and expenses.....	5,002.31	3,720.03	517.13	485.64	5,519.44	4,205.67
Total station service.....	82,957.60	75,755.10	9,609.79	8,975.36	92,567.39	84,730.46
Yard service—						
Yardmasters, switchmen, etc.....	37,343.05	28,268.44	1,877.06	1,327.57	39,220.11	29,596.01
Yard supplies.....	365.62	208.97	.....	Cr. 1.81	365.62	207.16
Yard enginemen.....	17,230.78	13,879.57	1,880.90	1,686.24	19,111.68	15,565.81
Enginehouse expenses—yard.....	4,306.74	3,696.11	339.88	419.93	4,646.62	4,116.04
Fuel for yard locomotives.....	17,594.04	12,499.25	1,541.19	1,220.97	19,135.23	13,720.22
Other supplies and expenses for yard locomotives.....	2,232.90	1,459.46	.....	Cr. .08	2,232.90	1,459.38
Total yard service.....	79,073.13	60,011.80	5,639.03	4,652.82	84,712.16	64,664.62
Road engine service—						
Road enginemen.....	121,819.81	93,795.71	8,840.22	7,183.08	130,660.03	100,978.79
Enginehouse expenses—road.....	34,764.87	28,079.74	1,854.72	1,713.92	36,619.59	29,793.66
Fuel for road locomotives.....	214,317.50	162,713.62	13,210.14	10,541.14	227,527.64	173,254.76
Water for road locomotives.....	12,467.07	10,105.45	814.88	812.48	13,281.95	10,917.98
Other supplies for road locomotives.....	7,253.56	5,710.06	481.91	315.31	7,735.47	6,025.37
Total road engine service.....	390,622.81	300,404.58	25,201.87	20,565.93	415,824.68	320,970.51
Train service—						
Road trainmen.....	131,758.94	103,111.65	10,513.17	8,714.71	142,272.11	111,826.36
Train supplies and expenses.....	41,819.21	36,849.17	1,478.52	1,211.03	43,297.73	38,060.20
Total train service.....	173,578.15	139,960.82	11,991.69	9,925.74	185,569.84	149,886.56
Telegraph service—						
Dispatching trains.....	19,056.84	14,509.91	805.06	753.73	19,861.90	15,263.64
Telegraph and telephone, operation.....	7,705.77	4,408.17	505.96	284.17	8,211.73	4,692.34
Total telegraph service..	26,762.61	18,918.08	1,311.02	1,037.90	28,073.63	19,955.98
Contingencies—						
Superintendence.....	16,936.84	13,174.81	1,650.85	1,284.86	18,587.69	14,459.67
Loss and damage.....	70,971.61	64,922.06	2,077.12	1,754.81	73,048.73	66,676.87
All other contingent expenses.....	44,402.41	27,546.36	6,212.23	2,421.00	50,614.64	29,967.36
Total contingencies.....	132,310.86	105,643.23	9,940.20	5,460.67	142,251.06	111,103.90
Total transportation expenses.....	885,305.16	700,693.61	63,693.60	50,618.42	948,998.76	751,312.03
General expenses.....	71,736.20	51,565.35	4,892.62	4,333.02	76,628.82	55,898.37
Total freight operating expenses.....	2,030,763.12	1,627,050.02	121,105.10	104,393.31	2,151,868.22	1,731,443.33

ATCHISON, TOPEKA & SANTA FE EXHIBIT—Continued.

Cost and statistics of freight operation, Illinois division, year of 1910 and 1909—Contd.

Freight statistics and averages.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Gross ton miles, east.....	620,808,959	541,599,162	27,479,042	19,558,235	648,288,001	561,157,397
Gross ton miles west.....	734,677,618	538,550,417	17,059,041	14,198,041	751,736,659	552,748,458
Total.....	1,355,486,577	1,080,149,579	44,538,083	33,756,276	1,400,024,660	1,113,905,855
Number of tons per train mile, gross.....	1,071	1,002	521	462	1,036	1,049
Number of tons per mile of road, gross.....	6,018,233	4,795,550	768,294	582,306	4,943,590	3,933,145
Net ton miles.....	547,771,433	423,819,577	19,201,520	14,068,899	566,972,953	437,888,476
Number of tons per train mile, net.....	433	428	225	193	419	412
Number of tons per mile of road, net.....	2,432,054	1,879,416	331,233	242,693	2,002,023	1,544,396
Number of tons per loaded car per mile.....	17.55	16.45	21.05	18.95	17.66	16.52
Engine miles.....	1,409,400	1,106,333	88,717	73,849	1,498,117	1,180,182
Engine miles per mile of road.....	6,258	4,912	1,530	1,273	5,290	4,167
Engines per train.....	1.11	1.12	1.04	1.01	1.10	1.11
Train miles, east.....	632,517	502,971	42,682	36,534	675,199	539,505
Train miles, west.....	633,486	485,809	42,767	36,455	676,253	522,264
Total.....	1,266,003	988,780	85,449	72,989	1,351,452	1,061,769
Train miles per mile of road.....	5,621	4,390	1,475	1,259	4,772	3,749
Car miles, loaded.....	31,216,613	25,738,864	911,940	742,554	32,128,553	26,481,418
Car miles, empty.....	11,611,174	9,895,613	505,931	412,815	12,117,105	10,308,428
Total.....	42,827,787	35,634,477	1,417,871	1,155,369	44,245,658	36,789,846
Per cent car miles, loaded.....	73	72	64	64	73	72
Cost per 10,000 gross ton miles:						
For transportation expenses.....	\$6.53	\$6.49	\$14.30	\$15.00	\$6.78	\$6.74
For all other expenses.....	8.45	8.57	12.89	15.93	8.59	8.80
For total operating expenses.....	14.98	15.06	27.19	30.93	15.37	15.54
Cost per 10,000 net ton miles:						
For transportation expenses.....	16.16	16.55	33.17	35.98	16.74	17.18
For all other expenses.....	20.91	21.89	29.90	38.22	21.22	22.41
For total operating expenses.....	37.07	38.44	63.07	74.20	37.96	39.59
Road mileage.....	225.23	225.24	57.97	57.97	283.20	283.21

ATOHISON, TOPEKA & SANTA FE EXHIBIT—Continued.

Cost and statistics of freight operation, Missouri Division, year of 1910 and 1909.

Accounts.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Maintenance of way and structures.....	\$468,656.78	\$302,986.99	\$55,192.65	\$20,438.52	\$523,849.43	\$323,425.51
Maintenance of equipment.....	605,738.02	544,398.65	29,305.67	29,105.28	635,043.69	573,503.93
Traffic expenses.....	65,235.54	56,971.89	2,528.58	2,419.31	67,764.12	59,391.20
Transportation expenses:						
Station service—						
Station employees.....	64,615.31	60,359.82	7,679.18	9,399.05	72,294.49	69,698.87
Station supplies and expenses.....	3,561.92	3,066.35	474.08	426.88	4,036.09	3,493.23
Total station service.....	68,177.23	63,426.17	8,153.26	9,765.93	76,330.49	73,192.10
Yard service—						
Yardmasters, switchmen, etc.....	32,519.44	29,327.66	.....	9.11	32,519.44	29,336.77
Yard supplies.....	153.45	91.06	22.90	80.91	176.35	171.97
Yard enginemen.....	14,701.28	13,842.59	.....	10.98	14,701.28	13,853.52
Enginehouse expenses—						
Yard.....	4,005.61	4,104.07	.....	.....	4,005.61	4,104.07
Fuel for yard locomotives.....	15,122.17	11,786.99	3.04	.....	15,125.21	11,786.99
Other supplies and expenses for yard locomotives.....	2,144.01	1,418.67	.....	Cr. .10	2,144.01	1,418.57
Total yard service.....	68,645.96	60,571.04	25.94	100.85	68,671.90	60,671.89
Road engine service—						
Road enginemen.....	121,108.58	89,546.66	14,924.98	11,331.31	136,033.51	100,877.97
Enginehouse expenses—						
Road.....	41,409.37	32,247.27	4,045.33	3,797.45	45,454.70	36,044.72
Fuel for road locomotives.....	248,454.83	172,984.04	22,262.22	14,571.46	270,717.05	187,555.50
Water for road locomotives.....	10,153.70	11,923.14	367.14	368.48	10,520.84	12,291.62
Other supplies for road locomotives.....	6,967.95	5,440.44	841.59	801.07	7,809.54	6,241.51
Total road engine service.....	428,094.43	312,141.55	42,441.21	30,869.77	470,535.64	343,011.32
Train service—						
Road trainmen.....	140,755.88	102,238.59	18,545.82	14,407.28	159,301.70	116,645.82
Train supplies and expenses.....	39,896.61	35,113.86	1,548.92	1,542.20	41,445.53	36,656.06
Total train service.....	180,652.49	137,352.45	20,094.74	15,949.43	200,747.23	153,301.88
Telegraph service—						
Dispatching trains.....	20,490.59	17,908.83	4,029.68	3,117.44	24,520.27	21,026.27
Telegraph and telephone—						
Operation.....	11,003.59	9,830.01	918.95	460.83	11,922.54	10,290.84
Total telegraph service..	31,494.18	27,738.84	4,948.63	3,578.27	36,442.81	31,317.11
Contingencies—						
Superintendence.....	16,319.28	13,122.13	2,281.70	1,831.36	18,600.98	14,953.49
Loss and damage.....	68,680.49	63,163.12	3,165.68	3,022.41	71,846.17	66,185.53
All other contingent expenses.....	30,091.41	14,635.46	50,943.36	42,138.78	81,034.77	56,774.24
Total contingencies.....	115,091.18	90,920.71	56,390.74	46,992.55	171,481.92	137,913.26
Total transportation expenses.....	892,155.47	692,150.76	132,054.52	107,256.80	1,024,209.99	799,407.56
General expenses.....	70,630.17	53,553.91	7,266.26	5,530.10	77,896.43	59,084.01
Total freight operating expenses.....	2,102,415.98	1,650,062.20	226,347.68	164,750.01	2,328,763.66	1,814,812.21

ATOHISON, TOPEKA & SANTA FE EXHIBIT—Continued.

Cost and statistics of freight operation, Missouri Division, year of 1910 and 1909—Contd.

Freight statistics and averages.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Gross ton miles, east.....	564,504,489	498,314,558	20,435,776	17,142,400	584,940,265	515,456,958
Gross ton miles, west.....	663,564,096	515,401,151	20,140,829	18,633,660	713,704,925	534,034,811
Total.....	1,258,068,585	1,013,715,709	40,576,605	35,776,060	1,298,645,190	1,049,491,769
Number of tons per train mile, gross.....	1,025	1,011	345	370	966	955
Number of tons per mile of road, gross.....	5,889,282	4,742,971	529,790	467,111	4,474,846	3,614,942
Net ton miles.....	489,943,896	392,680,155	12,755,381	12,038,995	502,689,277	404,719,150
Number of tons per train mile, net.....	399	392	108	124	374	368
Number of tons per mile of road, net.....	2,293,530	1,837,272	166,542	157,188	1,732,191	1,394,045
Number of tons per loaded car per mile.....	16.34	15.55	16.32	16.24	16.34	15.57
Engine miles.....	1,310,058	1,060,526	132,211	109,147	1,442,269	1,169,673
Engine miles per mile of road	6.133	4.962	1.726	1.425	4.970	4.029
Engines per train.....	1.07	1.06	1.12	1.13	1.07	1.06
Train miles, east.....	624,663	528,217	58,555	48,637	683,218	576,854
Train miles, west.....	602,434	474,218	59,062	48,167	661,496	522,385
Total.....	1,227,097	1,002,435	117,617	96,804	1,344,714	1,099,239
Train miles per mile of road...	5,744	4,690	1,536	1,264	4,634	3,787
Car miles, loaded.....	29,982,075	25,255,501	781,740	741,091	30,763,815	25,996,592
Car miles, empty.....	10,805,277	8,829,761	820,258	692,805	11,625,535	9,522,566
Total.....	40,787,352	34,085,262	1,601,998	1,433,896	42,389,350	35,519,158
Per cent car miles loaded.....	73	74	49	52	72	73
Cost per 10,000 gross ton miles: For transportation expenses.....	\$7.09	\$6.82	\$32.54	\$29.98	\$7.89	\$7.62
For all other expenses.....	9.62	9.45	23.24	16.07	10.05	9.68
For total operating ex- penses.....	16.71	16.27	55.78	46.05	17.94	17.30
Cost per 10,000 net ton miles: For transportation expenses.....	18.21	17.63	103.53	89.09	20.37	19.75
For all other expenses.....	24.70	24.39	73.92	47.76	25.95	25.09
For total operating ex- penses.....	42.91	42.02	177.45	136.85	46.32	44.84
Road mileage.....	213.62	213.73	76.59	76.59	290.21	290.32

ATCHISON, TOPEKA & SANTA FE EXHIBIT—Continued.

Cost and statistics of freight operation, all divisions, year ending June 30, 1910.

Accounts.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Maintenance of way and structures.....	\$1,802,498.37	\$1,146,836.13	\$108,032.26	\$69,136.84	\$1,910,530.63	\$1,215,972.97
Maintenance of equipment....	2,765,840.37	2,316,273.33	57,650.65	47,668.44	2,823,491.02	2,363,941.77
Traffic expenses.....	191,889.49	163,718.78	2,500.44	2,700.27	194,389.93	166,419.05
Transportation expenses:						
Station service—						
Station employees.....	758,650.69	667,386.09	65,698.11	56,136.64	824,348.80	723,522.73
Station supplies and expenses.....	39,938.95	36,144.36	2,577.74	1,008.21	42,516.69	37,152.57
Total station service....	798,589.64	703,530.45	68,275.85	57,144.85	866,865.49	761,275.30
Yard service—						
Yardmasters, switchmen, etc.....	295,527.61	216,062.77	2,623.97	3,552.05	298,151.58	219,614.82
Yard supplies.....	1,299.42	1,053.88	.13	101.64	1,299.55	1,155.52
Yard engineers.....	118,189.72	88,665.82	2,771.10	2,558.08	120,960.82	91,223.90
Enginehouse expenses—						
yard.....	35,925.73	27,921.99	272.07	208.72	36,197.80	28,130.71
Fuel for yard locomotives.....	161,343.79	93,534.05	1,581.77	1,045.64	162,925.56	94,579.69
Other supplies and expenses for yard locomotives.....	21,255.05	15,026.62	298.13	368.60	21,553.18	15,395.22
Total yard service.....	633,541.32	442,265.13	7,547.17	7,834.73	641,088.49	450,099.86
Road engine service—						
Road engineers.....	635,209.99	470,472.96	24,092.09	21,535.79	659,302.08	492,008.75
Enginehouse expenses—						
road.....	181,254.47	114,301.52	7,633.29	5,929.73	188,887.76	120,231.25
Fuel for road locomotives.....	1,464,536.59	937,111.21	37,212.67	27,148.87	1,501,749.26	964,260.08
Water for road locomotives.....	114,939.58	101,054.47	2,741.18	1,626.34	117,680.76	102,680.81
Other supplies for road locomotives.....	45,084.57	31,214.65	1,229.21	992.79	46,313.78	32,207.44
Total road engine service.....	2,441,026.20	1,654,154.81	72,908.44	57,233.52	2,513,933.64	1,711,388.33
Train service—						
Road trainmen.....	734,942.68	534,383.60	34,486.43	30,882.47	769,429.11	565,266.07
Train supplies and expenses.....	101,108.56	67,157.19	1,378.07	1,241.36	102,486.63	68,398.55
Total train service.....	836,051.24	601,540.79	35,864.50	32,123.83	871,915.74	633,664.62
Telegraph service—						
Dispatching trains.....	84,754.14	53,639.38	3,380.70	1,683.77	88,134.84	55,323.15
Telegraph and telephone—operation....	34,541.52	24,729.48	1,440.69	1,093.33	35,982.21	25,822.81
Total telegraph service.....	119,295.66	78,368.86	4,821.39	2,777.10	124,117.05	81,145.96
Contingencies—						
Superintendence.....	112,918.63	86,008.91	7,838.97	4,734.04	120,757.60	90,742.95
Loss and damage.....	215,016.61	214,065.50	2,344.20	4,580.94	217,360.81	218,646.44
All other contingent expenses.....	212,841.83	133,453.47	10,494.60	689.80	223,336.43	134,143.27
Total contingencies.....	540,777.07	433,527.88	20,677.77	10,004.78	561,454.84	443,532.66
Total transportation.....	5,369,280.13	3,913,387.92	210,095.12	167,718.81	5,579,375.25	4,081,106.73
.....	276,917.57	243,230.94	11,531.85	12,102.80	288,449.42	255,333.74
Total.....	5,646,197.70	4,156,618.86	221,626.97	179,821.61	5,867,824.67	4,336,440.47

ATCHISON, TOPEKA & SANTA FE EXHIBIT—Continued.

Cost and statistics of freight operation, all divisions, year ending June 30, 1910—Contd.

Statistics and averages.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Gross ton miles, east.....	2,702,391,398	2,079,128,873	31,546,095	22,594,623	2,733,937,493	2,101,723,496
Gross ton miles, west.....	2,787,934,924	2,160,666,381	29,041,577	24,172,472	2,816,976,501	2,184,838,863
Total.....	5,490,326,322	4,239,795,254	60,587,672	46,767,095	5,550,913,994	4,286,562,340
Number of tons per train mile, gross.....	1,083	1,093	268	222	1,048	1,048
Number of tons per mile of road, gross.....	3,581,777	2,765,649	161,421	124,606	2,908,994	2,246,226
Net ton miles.....	2,312,436,478	1,799,490,813	22,383,039	16,609,228	2,334,819,517	1,816,100,041
Number of tons per train mile, net.....	456	464	99	79	441	444
Number of tons per mile of road, net.....	1,508,586	1,173,821	59,634	44,254	1,223,578	951,665
Number of tons per loaded car per mile.....	19.15	18.61	16.17	14.64	19.11	18.56
Engine miles.....	6,172,182	4,714,475	234,930	221,468	6,407,112	4,935,943
Engine miles per mile of road.	4,027	3,075	626	590	3,358	2,587
Engines per train.....	1.22	1.22	1.04	1.05	1.21	1.21
Train miles, east.....	2,548,265	1,938,399	106,833	96,967	2,655,098	2,035,366
Train miles, west.....	2,521,118	1,940,153	119,198	113,926	2,640,316	2,054,079
Total.....	5,069,383	3,878,552	226,031	210,893	5,295,414	4,089,445
Train miles per mile of road...	3,307	2,530	602	562	2,775	2,143
Car miles, loaded.....	120,764,624	96,709,282	1,384,021	1,134,288	122,148,645	97,843,570
Car miles, empty.....	47,689,224	34,501,069	843,477	636,007	48,532,701	35,137,076
Total.....	168,453,848	131,210,351	2,227,498	1,770,295	170,681,346	132,980,646
Per cent car miles loaded.....	72	74	62	64	72	74
Cost per 10,000 gross ton miles:						
For transportation expenses.	\$9.78	\$9.23	\$34.68	\$35.86	\$10.05	\$9.52
For all other expenses.....	9.17	9.13	29.66	28.14	9.40	9.34
For total operating ex- penses.....	18.95	18.36	64.34	64.00	19.45	18.86
Cost per 10,000 net ton miles:						
For transportation expenses.	23.16	21.75	93.86	100.98	23.83	22.47
For all other expenses.....	21.72	21.50	80.29	79.24	22.29	22.04
For total operating ex- penses.....	44.88	43.25	174.15	180.22	46.12	44.51
Road mileage.....	1,532.85	1,533.02	375.34	375.32	1,908.19	1,908.34

	1909	1910
Net ton miles.....	1,816,100,041	2,334,819,517
Water ton miles.....	5,027,135	6,177,119
Total ton miles.....	1,821,127,176	2,340,996,636

ATCHISON, TOPEKA & SANTA FE EXHIBIT—Continued.

Cost and statistics of passenger operation, eastern lines, years of 1910 and 1909.

Accounts.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Maintenance of way and structures.....	\$1,590,798.69	\$1,050,597.01	\$1,248,530.63	\$902,012.14	\$2,839,329.32	\$1,952,609.15
Maintenance of equipment.....	861,735.24	716,660.66	456,997.35	322,444.97	1,318,732.59	1,039,105.63
Traffic expenses.....	228,492.54	229,956.22	122,870.80	103,878.00	351,363.34	333,834.22
Transportation expenses:						
Station service—						
Station employees....	141,208.56	148,278.72	117,973.78	94,442.02	259,180.34	242,720.74
Station supplies and expenses.....	81,529.60	24,725.45	23,383.63	17,249.15	54,913.23	41,974.60
Total station service.....	172,738.16	173,004.17	141,357.41	111,691.17	314,093.57	284,695.34
Yard service—						
Yardmasters, switchmen, etc.....	49,284.81	41,501.27	6,464.09	4,417.55	55,748.90	45,918.82
Yard supplies.....	199.65	228.59	61.07	48.30	260.72	276.89
Yard engine men.....	18,135.14	15,894.23	3,124.57	1,931.60	21,259.71	17,825.83
Enginehouse expenses—Yard.....	5,097.68	5,148.70	1,098.91	674.31	6,196.59	5,823.01
Fuel for yard locomotives.....	17,271.82	14,866.06	2,722.44	1,462.53	19,994.26	16,328.59
Other supplies and expenses for yard locomotives.....	2,609.59	1,809.52	295.45	203.18	2,905.04	2,012.70
Total yard service..	92,598.69	79,448.37	13,766.53	8,737.47	106,365.22	88,185.84
Road-engine service—						
Road engine men.....	282,769.58	259,996.02	178,122.56	140,770.27	460,892.14	400,766.29
Enginehouse expenses—Road.....	90,182.48	82,974.62	53,313.00	42,853.82	143,495.48	125,828.44
Fuel for road locomotives.....	354,002.90	284,780.56	203,971.91	144,950.82	557,974.81	429,731.38
Water for road locomotives.....	40,246.40	33,715.30	11,988.21	11,661.19	52,234.61	45,376.49
Other supplies for road locomotives...	16,123.65	12,576.34	10,574.80	7,092.01	26,698.45	19,668.85
Total road-engine service.....	783,325.01	674,042.84	457,970.48	347,328.11	1,241,295.49	1,021,370.95
Train service—						
Road trainmen.....	220,610.49	197,425.89	152,997.25	124,208.02	373,607.74	321,633.91
Train supplies and expenses.....	160,815.35	141,022.67	82,574.21	64,670.81	243,389.56	205,693.48
Total train service..	381,425.84	338,448.56	235,571.46	188,878.83	616,997.30	527,327.39
Telegraph service—						
Dispatching trains...	54,706.54	52,599.06	21,638.69	16,493.96	76,345.23	69,093.02
Telegraph and telephone—Operation..	31,672.38	29,967.76	17,093.73	9,600.33	48,766.11	39,568.09
Total telegraph service.....	86,378.92	82,566.82	38,732.42	26,094.29	125,111.34	108,661.11
Contingencies—						
Superintendence.....	69,929.28	63,949.25	46,866.82	32,842.50	116,795.60	96,791.75
Loss and damage.....	51,691.80	20,010.11	20,567.75	14,441.71	72,259.55	34,451.82
All other contingent expenses.....	146,445.66	127,383.17	62,082.56	71,288.58	208,528.22	198,672.25
Total contingencies	268,066.74	211,343.43	129,516.63	118,572.79	397,583.37	329,915.82
Total transportation expenses.....	1,784,531.36	1,558,853.19	1,016,914.93	801,302.66	2,801,446.29	2,380,156.45
General expenses...	202,933.40	177,136.04	123,995.06	91,213.19	326,928.46	268,349.23
Total passenger operating expenses.....	4,668,491.23	3,733,203.72	2,969,308.77	2,220,850.96	7,637,800.00	6,954,054.68

ATCHISON, TOPEKA & SANTA FE EXHIBIT—Continued.

Cost and statistics of passenger operation, eastern lines, years of 1910 and 1909—Continued.

Passenger statistics and averages.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Train miles.....	3,943,163	3,715,720	2,470,517	2,049,727	6,413,680	5,765,447
Train miles per mile of road...	3,247	2,969	1,494	1,267	2,237	2,009
Car miles.....	26,997,900	26,449,187	14,834,079	11,958,061	41,831,979	38,407,248
Cost per train mile:						
Maintenance of way and structures.....	\$0.40	\$0.28	\$0.51	\$0.44	\$0.44	\$0.33
Maintenance of equipment..	.22	.20	.18	.16	.21	.18
Traffic expenses.....	.06	.06	.05	.05	.05	.06
Transportation expenses....	.45	.42	.41	.39	.44	.41
General expenses.....	.05	.05	.05	.04	.05	.05
Total operating expenses	1.18	1.01	1.20	1.08	1.19	1.03
Cost per car mile:						
Maintenance of way and structures.....	.05	.04	.08	.08	.06	.05
Maintenance of equipment..	.03	.03	.03	.03	.03	.03
Traffic expenses.....	.01	.01	.01	.01	.01	.01
Transportation expenses....	.07	.05	.07	.06	.07	.06
General expenses.....	.01	.01	.01	.01	.01	.01
Total operating expenses	.17	.14	.20	.19	.18	.16
Road mileage.....	1,214.38	1,251.37	1,653.24	1,618.79	2,867.62	2,870.16

Cost and statistics of passenger operation, coast lines, year ending June 30, 1910.

Accounts.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Maintenance of way and structures.....	\$1,637,712.37	\$1,187,809.78	\$159,525.19	\$131,679.57	\$1,797,237.56	\$1,319,489.35
Maintenance of equipment..	1,109,831.25	821,857.53	72,703.05	52,815.33	1,182,534.30	874,672.86
Traffic expenses.....	256,981.14	217,032.94	12,804.68	10,281.09	269,785.82	227,314.03
Transportation expenses:						
Station service—						
Station employees.....	169,205.46	122,415.24	21,379.67	17,702.22	190,585.13	140,117.46
Station supplies and expenses.....	79,858.05	56,242.98	4,934.05	4,178.38	84,792.10	60,421.36
Total station service ..	249,063.51	178,658.22	26,313.72	21,880.60	275,377.23	200,538.82
Yard service—						
Yardmasters, switchmen, etc.....	36,637.82	30,358.59	6.25	622.77	36,644.07	30,981.36
Yard supplies.....	230.35	151.67	.94	5.21	231.29	156.88
Yard enginemen.....	14,901.20	11,869.76	.52	275.08	14,901.72	12,144.84
Enginehouse expenses—yard.....	5,004.52	3,209.95	67.73	56.48	5,072.25	3,266.43
Fuel for yard locomotives.....	20,566.94	13,033.86	399.32	273.41	20,966.26	13,307.27
Other supplies and expenses for yard locomotives.....	2,434.23	1,716.94	78.23	102.50	2,512.46	1,819.44
Total yard service.....	79,775.06	60,340.77	552.99	1,335.45	80,328.05	61,676.22
Road engine service—						
Road enginemen.....	336,662.77	259,766.28	33,157.71	29,956.51	369,820.48	289,722.79
Enginehouse expenses—road.....	125,396.94	88,574.78	10,203.47	7,844.22	135,600.41	96,419.00
Fuel for road locomotives	562,104.63	375,280.90	45,657.14	30,750.28	607,761.77	406,031.18
Water for road locomotives.....	82,110.54	76,868.91	4,734.72	2,602.60	86,845.26	79,471.51
Other supplies for road locomotives.....	20,744.71	17,092.98	1,405.48	1,144.78	22,150.19	18,237.76
Total road engine service.....	1,127,019.59	817,583.85	95,158.52	72,298.39	1,222,178.11	889,882.24

ATCHISON, TOPEKA & SANTA FE EXHIBIT—Continued.

Cost and statistics of passenger operation, coast lines, year ending June 30, 1910—Contd.

Accounts.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Transportation expenses—Continued.						
Train service—						
Road trainmen.....	\$250,986.35	\$210,670.54	\$32,081.02	\$26,763.31	\$283,067.37	\$237,433.85
Train supplies and expenses.....	173,700.91	133,696.82	8,147.91	7,443.29	181,848.82	141,140.11
Total train service.....	424,687.26	344,367.36	40,228.93	34,206.60	464,916.19	378,573.96
Telegraph service—						
Dispatching trains.....	65,418.13	48,093.88	4,670.21	3,478.90	70,088.34	51,572.78
Telegraph and telephone—operation...	27,357.91	21,016.26	2,473.23	1,930.06	29,831.14	22,946.32
Total telegraph service	92,776.04	69,110.14	7,143.44	5,408.96	99,919.48	74,519.10
Contingencies—						
Superintendence.....	72,744.71	68,504.77	8,841.87	8,084.55	81,586.58	76,589.32
Loss and damage.....	18,485.38	21,563.71	1,016.24	1,603.81	19,501.62	23,167.52
All other contingent expenses.....	150,937.70	106,713.60	3,984.69	4,012.76	154,922.39	110,726.36
Total contingencies...	242,167.79	196,782.08	13,842.80	13,701.12	256,010.59	210,483.20
Total transportation expenses.....	2,215,489.25	1,666,842.42	183,240.40	148,831.12	2,398,729.65	1,815,673.54
General expenses.....	167,831.49	165,353.60	16,612.34	16,294.59	184,443.83	181,648.19
Total passenger operating expenses.....	5,387,845.50	4,058,896.27	444,885.66	359,901.70	5,832,731.16	4,418,797.97
Passenger statistics and averages.	Main line.		Branch lines.		Total.	
	1910	1909	1910	1909	1910	1909
Train miles.....	4,191,006	3,568,808	434,993	393,191	4,625,999	3,961,999
Train miles per mile of road...	2,734	2,328	1,159	1,048	2,424	2,076
Car miles.....	29,316,514	25,245,657	1,461,554	1,259,654	30,778,068	26,505,311
Cost per train mile:						
Maintenance of way and structures.....	\$0.39	\$0.33	\$0.37	\$0.33	\$0.39	\$0.33
Maintenance of equipment..	.26	.23	.17	.14	.26	.22
Traffic expenses.....	.06	.06	.03	.03	.06	.06
Transportation expenses....	.53	.47	.42	.38	.51	.46
General expenses.....	.04	.05	.03	.04	.04	.05
Total operating expenses	1.28	1.14	1.02	.92	1.26	1.12
Cost per car mile:						
Maintenance of way and structures.....	.05	.05	.11	.11	.05	.05
Maintenance of equipment..	.03	.03	.05	.04	.04	.03
Traffic expenses.....	.01	.01	.01	.01	.01	.01
Transportation expenses....	.08	.06	.12	.12	.08	.07
General expenses.....	.01	.01	.01	.01	.01	.01
Total operating expenses	.18	.16	.30	.29	.19	.17
Road mileage.....	1,532.85	1,533.02	375.34	375.32	1,908.19	1,908.34

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Summary of operating statistics for month of August, 1910, compared with August, 1909, showing amount saved by reduction of operating expenses based on tonnage for August, 1910.

Division.	Tons moved one mile.		Tons per train per mile.		Tons per loaded car mile.		Cost per train mile in cents.		Cost per 100 tons one mile in cents.				Miles of single main track, main lines and branches.	Ton miles per mile of main track.		Density rank.	
	1910	1909	1910	1909	1910	1909	1910	1909	Conducting transportation.		Total operating expenses.			Saving. (See note below.)	1910		1909
									1910	1909	1910	1909					
Aurora.....	88,726,698	92,758,786	491.17	498.63	17.68	17.98	240.97	215.20	20.94	18.30	48.60	42.51	*54,023.46	158,257	165,449	3 4	
Galesburg.....	44,207,208	56,217,726	476.14	526.00	20.16	22.87	205.58	212.12	20.29	16.79	42.06	39.47	*11,428.46	71,842	91,360	12 9	
La Crosse.....	59,754,709	66,838,778	672.02	726.41	19.77	21.36	264.39	253.83	14.73	11.71	39.32	34.94	*26,200.19	192,863	215,727	1 1	
Beardstown.....	30,260,862	63,881,107	424.25	710.64	22.68	31.27	193.73	196.20	19.32	11.29	45.67	27.59	*54,697.43	78,624	165,977	8 3	
Total Illinois district.....	222,949,475	279,686,397	514.02	589.07	19.27	21.87	230.52	218.45	18.93	14.82	44.42	36.68	*146,349.54	119,179	149,514	.....
Burlington.....	3,435,562	3,210,018	137.66	127.82	15.24	14.48	186.64	185.29	53.78	49.46	135.30	140.11	1,654.21	10,361	9,680	20 20	
Ottumwa.....	55,528,271	66,482,178	441.48	556.53	17.43	19.53	208.61	258.79	18.97	14.58	47.19	46.31	*4,866.71	154,834	185,378	4 2	
Creston.....	18,763,722	22,133,828	378.55	406.98	18.71	20.45	218.50	241.34	21.64	15.93	55.27	55.74	*882.79	58,520	69,030	13 10	
Total Iowa district.....	77,727,555	91,826,024	388.05	461.54	17.61	19.50	208.22	245.02	21.15	16.13	53.03	51.86	*2,329.71	76,892	90,839	.....
Hannibal.....	40,328,796	37,543,551	563.24	618.89	19.78	18.75	241.73	259.08	20.96	18.48	42.49	41.32	*4,704.24	123,029	114,539	6 7	
Centerville.....	7,191,170	4,639,796	199.55	154.18	21.83	16.27	207.89	232.35	33.77	41.64	102.31	146.78	31,975.41	16,581	10,698	17 18	
Brookfield.....	36,416,137	40,316,099	327.24	329.40	17.17	17.56	159.35	148.34	26.46	17.73	48.69	45.02	*13,380.87	137,290	151,993	5 5	
St. Joseph.....	40,850,781	33,722,119	490.45	445.98	21.20	19.71	299.00	303.49	33.95	30.83	60.78	67.78	28,589.00	77,857	64,271	9 12	
Total Missouri district.....	124,786,884	116,221,565	412.91	402.48	19.45	18.46	223.07	220.77	27.56	22.73	53.74	54.50	42,479.30	80,432	74,912	.....
Total east of Missouri River.....	425,463,914	487,743,986	454.43	506.73	18.99	20.50	223.35	224.58	21.86	16.95	48.72	43.79	*106,199.95	96,000	110,063	.....
Omaha.....	29,920,102	26,435,862	429.74	422.08	20.25	19.35	274.73	248.15	32.58	30.22	63.74	58.60	*15,393.07	74,744	66,040	11 11	
Lincoln.....	37,746,131	31,297,556	428.96	380.86	18.60	15.46	256.28	221.03	30.99	30.00	59.63	57.94	*6,372.10	52,055	43,566	14 14	
Wymore.....	23,833,796	25,315,104	349.31	381.15	18.78	20.11	192.28	197.36	22.16	19.51	52.20	49.10	*7,390.72	28,344	30,123	15 16	
McCook.....	60,066,736	50,251,029	508.33	502.16	21.85	21.16	196.79	181.91	18.75	16.46	38.26	35.51	*16,501.46	76,726	64,167	10 13	
Total Nebraska district.....	151,586,764	133,299,551	440.58	428.21	20.14	18.98	227.33	209.13	25.06	22.95	50.80	47.94	*45,657.35	55,134	48,610	.....
Sterling.....	16,188,433	18,139,486	334.69	392.82	25.26	23.22	208.17	226.13	25.82	18.41	58.35	53.89	*7,224.60	27,482	30,794	16 15	
Alliance Ex. Deadwood.....	59,083,022	44,692,555	547.92	481.20	20.71	16.24	233.36	211.51	16.83	16.92	40.76	43.93	18,741.28	168,984	127,934	2 6	

NOTE.—This is obtained by multiplying the tons one mile of this month by cost per 100 tons one mile in cents of same month last year, and deducting the total cost this month from the result. Loss is shown thus*. The loss for the system as a whole, worked out on total tons one mile and average cost for system, is \$248,846.84.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY—Continued.

Summary of operating statistics for month of August, 1910, compared with August, 1909, showing amount saved by reduction of operating expenses based on tonnage for August, 1910—Continued.

Division.	Tons moved one mile.		Tons per train per mile.		Tons per loaded car mile.		Cost per train mile in cents.		Cost per 100 tons one mile in cents.				Miles of single main track, main lines and branches.	Ton miles per mile of main track.		Density rank.
	1910	1909	1910	1909	1910	1909	1910	1909	Conducting transportation.	Total operating expenses.	Saving. (See note below.)	1910		1909		
Deadwood lines.....	2,724,354	2,433,506	163.73	161.51	22.81	22.86	444.63	360.03	93.11	64.96	252.66	205.08	*12,961.67	12,403	10,378	18
Sheridan.....	63,350,230	57,391,163	517.76	488.91	23.79	19.68	192.45	196.67	15.96	17.63	36.43	40.04	22,863.20	101,464	93,642	7
Total Wyoming district.....	141,296,039	122,656,710	478.80	451.76	22.52	18.71	219.99	215.10	18.94	18.42	44.92	46.78	21,418.21	79,272	68,685	.....
Total west of Missouri River.....	292,882,803	255,956,261	458.23	439.18	21.22	18.85	223.95	211.91	22.11	20.78	47.96	47.38	*24,239.14	64,627	56,528	.....
Q. O. & K. C. R. R.....	3,177,842	5,218,498	130.41	168.92	16.32	20.60	176.95	201.57	55.42	39.56	123.52	111.30	*3,882.86	12,129	19,918	19
Other roads.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
I. & St. L. Ry.....	91,310	182,730	32.52	63.60	11.17	14.37	473.72	407.59	141.35	87.46	1,002.21	490.13	*5,497.01	1,755	3,511	21
Total.....	721,615,869	749,101,475	450.28	474.39	19.82	19.90	223.27	219.75	22.13	18.43	48.88	45.59	*139,818.96	77,808	80,805	.....
Chicago terminals.....	4,821,906	3,970,364	.....	.....	.....	.....	.....	.....	256.82	255.12	350.02	396.75	22,534.81	567,263	467,102	.....
System total.....	726,437,775	753,071,839	451.91	475.43	19.91	19.97	223.23	229.16	23.60	19.68	50.88	47.45	*117,284.15	78,266	81,159	.....

NOTE.—This is obtained by multiplying the tons one mile of this month by cost per 100 tons one mile in cents of same month last year, and deducting the total cost this month from the result. Loss is shown thus*. The loss for the system as a whole, worked out on total tons one mile and average cost for system, is \$248,846.84.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY—Continued.

Summary of operating statistics for month of September, 1910, compared with September, 1909, showing amount saved by reduction of operating expenses based on tonnage for September, 1910.

Division.	Tons moved one mile.		Tons per train per mile.		Tons per loaded car mile.		Cost per train mile in cents.		Cost per 100 tons one mile in cents.				Miles of single main track—lines and branches.	Ton miles per mile of main track.		Density rank.	
	1910	1909	1910	1909	1910	1909	1910	1909	Conducting transportation.		Total operating expenses.	Savings. (See note below.)		1910	1909		
									1910	1909							
																	1910	1909
Aurora.....	93,688,036	90,104,465	507.79	482.46	18.53	17.81	216.43	230.22	20.04	18.74	42.27	47.00	44,276.03	167,255	160,714	3	4
Galesburg.....	49,081,902	60,254,771	485.22	551.47	20.10	23.38	202.54	211.82	20.28	16.13	40.82	37.66	*15,514.63	79,764	97,921	9	8
La Crosse.....	52,514,096	69,666,279	621.84	657.63	17.57	20.34	300.53	235.51	18.51	12.87	48.33	35.80	*65,797.43	169,493	224,853	2	1
Beardstown.....	44,644,830	71,718,715	517.47	777.12	24.80	33.32	181.99	202.71	16.73	10.46	35.13	26.08	*40,421.88	115,997	186,340	7	2
Total Illinois district.....	239,928,864	291,744,230	525.72	590.28	19.53	22.08	222.53	222.15	19.14	14.77	41.97	37.25	*77,457.91	128,290	155,955	.....	.....
Burlington.....	4,215,838	3,343,755	162.88	128.79	18.11	14.59	139.38	169.90	41.45	48.99	85.52	127.73	17,796.35	12,714	10,084	19	20
Ottumwa.....	62,400,101	57,650,543	477.57	453.88	19.17	17.54	179.32	241.68	17.74	17.40	37.50	52.99	96,648.41	173,996	160,752	1	3
Creston.....	21,691,919	17,975,801	412.17	331.25	20.64	17.59	171.59	255.37	20.73	20.83	39.87	72.21	70,141.38	67,652	56,063	12	12
Total Iowa district.....	88,307,858	78,970,099	422.18	381.05	19.46	17.41	172.44	236.20	19.61	19.51	40.38	60.53	184,586.14	87,358	78,121	.....	.....
Hannibal.....	40,004,294	35,446,439	552.61	613.60	20.10	18.23	233.69	264.82	22.23	18.89	41.90	42.65	3,016.47	122,039	108,141	6	7
Centerville.....	6,704,660	6,170,634	190.75	186.06	19.03	18.45	207.61	268.54	43.23	34.28	106.95	141.38	23,082.89	15,459	14,228	17	18
Brookfield.....	41,529,345	42,548,793	333.93	344.08	17.26	18.92	133.11	156.43	19.78	17.21	39.85	45.45	23,242.61	156,567	160,410	5	5
St. Joseph.....	41,032,860	34,377,075	480.18	428.01	19.77	19.30	264.61	299.97	31.95	31.57	54.76	69.40	60,083.18	78,204	65,519	10	10
Total Missouri district.....	129,271,159	118,542,941	407.33	401.97	18.94	18.79	199.52	229.01	25.62	22.77	48.70	56.55	109,425.15	83,323	76,408	.....	.....
Total east of Missouri River.....	457,507,881	489,257,270	465.46	491.03	19.35	20.33	204.46	227.08	21.06	17.47	43.56	45.69	216,553.38	103,242	110,394	.....	.....
Omaha.....	26,919,361	23,153,119	392.23	361.66	17.19	17.79	262.88	253.39	34.34	33.38	66.80	69.83	8,145.77	67,248	57,839	13	11
Lincoln.....	37,375,111	30,494,043	425.44	357.23	16.78	14.90	257.40	215.15	30.40	31.75	60.42	60.14	*1,051.90	51,543	42,447	14	14
Wymore.....	23,517,484	20,411,290	361.38	322.70	17.33	17.40	208.48	222.91	22.84	26.93	54.67	65.32	25,044.01	27,967	24,288	16	16
McCook.....	60,949,866	42,847,021	522.13	407.69	21.12	18.90	201.12	193.38	17.96	20.74	38.07	46.59	51,900.30	77,829	54,713	11	13
Total Nebraska district.....	148,761,822	116,905,473	439.75	367.94	18.51	17.22	229.98	217.26	24.82	27.20	51.51	57.99	84,038.18	54,106	42,632	.....	.....
Sterling.....	18,950,824	17,728,235	391.35	373.95	25.62	23.68	233.87	215.04	27.10	19.64	56.21	54.01	*4,163.18	32,171	30,096	15	15
Alliance Ex. Deadwood.....	55,851,363	47,289,535	534.60	449.96	18.00	16.11	238.58	214.94	18.94	19.24	44.63	47.77	17,549.60	159,877	135,368	4	6

NOTE.—This is obtained by multiplying the tons one mile of this month by cost per 100 tons one mile in cents of same month last year, and deducting the total cost this month from the result. Loss is shown thus *. The gain for the system as a whole, worked out on total tons one mile and average cost for system, is \$180,850.41.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY—Continued.

Summary of operating statistics for month of September, 1910, compared with September 1909, showing amount saved by reduction of operating expenses based on tonnage of September, 1910—Continued.

Division.	Tons moved one mile.		Tons per train per mile.		Tons per loaded car mile.		Cost per train mile in cents.		Cost per 100 tons one mile in cents.				Miles of single main track—main lines and branches.	Ton miles per mile of main track.		Density rank.
	1910	1909	1910	1909	1910	1909	1910	1909	Conducting transportation.	Total operating expenses.		Saving. (See note below.)		1910	1909	
Deadwood Lines.....	2,578,611	2,839,059	157.98	184.99	22.82	24.70	259.71	358.42	68.96	58.03	153.00	179.66	6,874.86	11,096	12,107	19
Sheridan.....	58,484,180	59,167,885	490.77	465.89	19.78	19.93	194.33	194.28	19.14	18.30	39.69	41.52	10,700.20	93,671	96,541	9
Total Wyoming district.....	135,864,978	127,024,714	467.11	430.81	19.66	18.76	220.39	212.99	21.11	19.72	46.17	48.68	30,961.48	75,684	71,132	.....
Total west of Missouri River.....	284,626,800	243,930,187	452.39	398.20	19.04	17.99	225.56	215.20	23.05	23.30	48.96	53.14	114,999.66	62,630	53,872	.....
Q. O. & K. C. R. R.....	3,665,262	5,062,777	138.18	156.63	15.99	19.26	186.67	207.78	53.68	44.91	124.06	124.13	26.40	13,990	19,324	18
Other roads.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
I. & St. L. Ry.....	92,734	241,394	83.75	81.69	11.04	14.47	305.82	414.85	170.69	80.01	683.57	391.65	2,706.08	1,782	4,639	21
Total.....	745,892,677	738,491,628	454.47	449.13	19.21	19.49	212.37	222.56	22.00	19.61	46.10	48.80	328,873.36	80,319	79,661	.....
Chicago terminals.....	5,060,365	4,001,390	.....	.....	.....	.....	.....	.....	257.47	266.87	354.99	381.31	13,317.05	562,263	470,752	.....
System total.....	750,953,042	742,493,018	456.18	450.35	19.29	19.56	222.79	231.35	23.59	20.94	48.18	50.59	342,190.41	80,786	80,019	.....

NOTE.—This is obtained by multiplying the tons one mile of this month by cost per 100 tons one mile in cents of same month last year, and deducting the total cost this month from the result. Loss is shown thus *. The gain for the system as a whole, worked out on total tons one mile and average cost for system, is \$180,850.41.

NOTE.—In submitting the tables showing estimated freight cost figures of the Chicago, Burlington & Quincy Railroad Company for each month of the fiscal year ending June 30, 1910, and for the months of July, August, and September of the fiscal year 1911, I attach and make a part of said tables the following explanation as a part of my testimony. These tables do not represent the cost of moving revenue freight, for the following reasons:

1. The division between freight and passenger is only an estimate, because many arbitrary steps are necessary in making the division.

2. The apportionment to divisions of the road is made so as to show the expense which is under the control of the operating superintendent; to illustrate, Omaha expense is all under the control of the superintendent of the first Nebraska Division, though much of that expense is due to breaking up trains from Iowa and Missouri, making up trains going into those States, and generally handling the business of those States. Furthermore, the expense of the great terminal at Chicago is not apportioned at all, though this expense should enter into the cost figures for all divisions.

3. The tonnage is all the tonnage, both company and revenue, and the proportion of these varies on each division, depending largely on location of maintenance, betterments, and new work being done.

4. The so-called "cost" figures do not show actual cost, but are made up to measure the comparative efficiency of superintendents, and to show the trend from month to month. In other words, the cost included in the railroad figures is influenced by a desire to show regular operating expenses in such a way as to reflect efficiency, and does not include inventory adjustments, "outside operations," rentals, hire of equipment, sinking-fund payments, or bond or other interest payments.

C. G. BURNHAM,
Vice President.

No. 3160.

JOHN MORRELL & COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY ET AL.

Submitted December 8, 1910. Decided February 13, 1911.

On tankage, a fertilizer material, the defendant lines formerly had a proportional rate of \$2.80 per ton from Ottumwa, Iowa, to the Ohio River, applying on movements to the southeast; while the proportional rate from Kansas City to the Ohio River was and is \$2.20 per ton, that being a compelled rate to meet competition through Memphis. The defendants later reduced their proportional from Ottumwa to \$2.20. Reparation on shipments moving under the \$2.80 rate from Ottumwa denied and complaint dismissed.

O'Donnell, Dillon & Toolen for complainants.

Hale Holden and *Herbert Haase* for Chicago, Burlington & Quincy Railroad Company.

R. Walton Moore for Illinois Central Railroad Company; Nashville, Chattanooga & St. Louis Railway; Seaboard Air Line Railway; Georgia Southern & Florida Railway Company; Central of Georgia Railway Company; Southern Railway Company; Georgia Railroad Company; and Mobile & Ohio Railroad Company.

W. A. Northcutt for Louisville & Nashville Railroad Company.

Herbert Haase for Wabash Railroad Company.

Rosser & Brandon for Atlanta, Birmingham & Atlantic Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

There are no joint through rates on tankage, a fertilizer material, from Ottumwa, in the state of Iowa, to destinations in southeastern states, and for several years the defendant lines extending from Ottumwa to the Ohio River have maintained a proportional rate of \$2.80 per net ton, applicable on such through shipments, the charges south of the Ohio River being collected at the regular local rates to the several destinations. From Kansas City to the Ohio River

crossings the proportional rate applied on similar traffic is and has been \$2.20 per net ton, thus affording a differential of 60 cents a ton in favor of Kansas City shippers. And on this ground the combination through rates from Ottumwa are attacked by the complainants as discriminatory and unreasonable to the extent of the difference between the two proportional rates.

The matter was made the occasion of an informal complaint to the Commission as long ago as August, 1909, the complainants having previously taken it up with the interested carriers, but without result. The defendants finally reduced the proportional rate from Ottumwa to the lower Ohio River crossings to \$2.20 per net ton in a tariff voluntarily published, and which became effective March 1, 1910. And the complaint, filed with the Commission ten days later, prays for reparation in the sum of \$1,562.99 on numerous carload shipments of tankage to Nashville, Jacksonville, Macon, and Savannah.

The complainants rely chiefly on the fact that the short-line mileage from Ottumwa to the Ohio River is less than the short-line distance from Kansas City, and on the further fact that the rate on packing-house products from Ottumwa is 1 cent per 100 pounds less than the rate from Kansas City. The defendants, on the other hand, assert that the Frisco system, with its direct line from Kansas City to Memphis, had put in effect a rate of \$3 per ton on tankage which was used in connection with local rates beyond Memphis that are 4 cents lower than the rates to the same destinations from the Ohio River. The defendants were compelled to meet this adjustment by establishing a proportional of \$2.20 from Kansas City to the Ohio River. They further explain that the Frisco has not compelled the establishment of a proportionately low rate on packing-house products. In reply the complainants point out that the Frisco, in exercising the rate-making power which it holds as the short line from Kansas City to Memphis, has contented itself with a rate that yields it earnings of but 6.2 mills per ton-mile.

In the light of those revenues, which apparently satisfy the rate-making line, the complainants think that the proportional rate of \$2.80 from Ottumwa to Cairo, which yielded the Burlington 7.4 mills per ton-mile for its haul to St. Louis, was excessive, and that the present proportional of \$2.20 ought to have afforded satisfactory revenues to the Burlington, since it is equivalent to 5.8 mills per ton-mile. This contention, however, does not take into account the fact that the haul to Cairo from Ottumwa is a two-line movement, and the earnings per ton per mile for the entire distance to Cairo were but 6.7 mills at the rate complained of, or 5.27 mills at the present rate of \$2.20. It also overlooks the fact that the \$2.80 proportional applied

not only to Cairo but to Cincinnati and New Albany, and on movements through the latter gateways the earnings of the lines north of the Ohio River amounted only to about 5 mills per ton-mile.

The defendants, by the voluntary reduction of their proportional rate from Ottumwa to the lower Ohio River crossings, have now put the complainants on an equal rate basis with their competitors at Kansas City; but the record does not convince us that the previous adjustment was unjustly preferential to the Kansas City shippers and unduly discriminated against the complainants. There is therefore no basis of record for an award of reparation; on the contrary, the record seems clearly to show that the \$2.20 rate, now voluntarily extended to Ottumwa, was a compelled rate at Kansas City, and was, when considered by itself, a low rate.

The complaint must therefore be dismissed, and it will be so ordered.

20 I. C. C. Rep.

No. 3486.

A. GEO. SCHULZ COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted December 3, 1910. Decided February 13, 1911.

1. Complainant's shipment of wood-pulp cartons from Milwaukee, Wis., to Spokane, Wash., was properly classified as wood-pulp cartons, and defendants were not justified in exacting the payment of an additional sum at destination upon a higher classification.
2. Reparation awarded for such additional sum and for demurrage charges which had in the meantime accrued; but it does not appear in this case that reparation should be awarded for an outlay in telegraphic charges.
3. It appears that after the car was partly unloaded the delivering carrier notified the consignee that, owing to a mistake in classification, additional charges must be paid, and, when the consignee declined to pay such additional charges, insisted that the portion of the carload which had been already removed should be returned to the car, which the consignee did; *Held*, That the expenditure due to removing and restoring a part of the carload was the direct consequence of the unlawful act of the delivering carrier in declining to deliver this carload, for which reparation should be awarded.

Glicksman, Gold & Corrigan for complainant.

W. A. Hayes for Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Spokane International Railway Company; and Canadian Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This complaint is brought by a corporation of Wisconsin with its place of business at Milwaukee, which is engaged in the manufacture and sale of paper boxes, straw and wood-pulp board cartons, and similar articles, and also uses what is known as chip board. It alleges that the freight charges exacted by the defendants on a shipment made by it to Spokane, Wash., are unreasonable, and asks reparation.

20 I. C. C. Rep.



On May 12, 1909, the complainant shipped to its own order, care Trowbridge Brothers at Spokane, one carload of its product. It prepaid the freight charges, amounting to \$360.80, based on a tariff which provided for binders' board, wood-pulp board, box board, and various similar kinds of board, including wood-pulp cartons, but which did not specifically mention chip board. This tariff carried a rate of \$1.10 from Milwaukee to Spokane. Upon arrival at destination the delivering carrier reclassified the shipment, upon the assumption that the so-called chip board properly fell under tariffs providing for rates on boxes, paper or pasteboard (including paraffin pasteboard boxes), folding egg cartons, etc.; and printed chip board, cut and shaped for shirt fronts. This reclassification operated to advance both the rate and the weight, so that an additional sum of \$398.45 was assessed, and this sum the complainant was compelled to pay in order to obtain possession of the shipment.

From a consideration of the record we are of the opinion that the carriers were not justified in reclassifying this shipment. It appears that this so-called chip board is a product similar to wood-pulp board, but of less value, and is in no wise similar to those articles which took the higher rate. We also find that it should not take a higher rate than that applicable to wood-pulp board and other similar articles. Since the date of movement the carriers have reduced the rate applicable to the articles with which they attempted to classify this shipment, so that to-day those articles and wood-pulp board take the same rate.

We are of the opinion that this shipment was properly classified as wood-pulp cartons; that the transportation charges had therefore been fully prepaid, and that the defendants were not justified in demanding and exacting the payment of the additional sum of \$398.45 at destination, and that the complainant is entitled to recover this sum.

When this shipment arrived at destination the consignee, assuming that the freight charges had been fully paid, began to unload the car. After the car was partly unloaded the delivering carrier notified the consignee that, owing to a mistake in classification, additional charges in the sum of \$398.45 must be paid, and when the consignee declined to pay such additional charges insisted that the portion of the carload which had been already removed should be returned to the car. This the consignee did, and the expense of taking out and putting back this portion of the carload was \$29, which sum the complainant afterwards paid.

After considerable correspondence the complainant finally instructed the consignee to pay the additional charges above named, and also \$17 demurrage which had in the meantime accrued; and these sums were paid to the defendants by the consignee upon account of the complainant. Telegraphic charges amounting to \$4.15 accrued

in the course of the correspondence in reference to this matter. These sums the complainant now seeks to recover, in addition to the excessive freight charges above stated.

The Commission has held that where a shipper is compelled to pay demurrage charges through the fault of the carrier the carrier must refund the charges so exacted. *Porter v. St. L. & S. F. R. R. Co.*, 15 I. C. C. Rep., 1; *Munroe & Sons v. M. C. R. R. Co.*, 17 I. C. C. Rep., 27. These demurrage charges accrued because the defendants improperly refused to deliver this car to the consignee, and the complainant is therefore entitled to the \$17 paid on that account.

The expenditure due to removing and re-storing a part of the carload was the direct consequence of the unlawful act of the delivering carrier in declining to deliver this carload. It was a part of the transaction and inseparably connected with it. In our opinion these damages are of such a character that in this case they can properly be and should be covered by the order of this Commission.

It might possibly be the right of the parties in the exercise of good judgment to resort to the telegraph as a means of correspondence in case of an emergency like that which existed, but it does not appear that in this case the result justified the outlay, since at least 17 days must have elapsed while demurrage was accruing. This amount should be, in our opinion, disallowed.

The complainant is entitled to an order for \$444.45, with interest from June 15, 1909.

20 I. C. C. Rep.

No. 2661.

O. C. BEALL

v.

WASHINGTON, ALEXANDRIA & MT. VERNON RAILWAY
COMPANY.

Submitted December 15, 1910. Decided February 13, 1911.

Single passenger fare of 15 cents, Washington, D. C., to Four Mile Run, St. Elmo, St. Asaph, Mount Ida, and Del Ray, in Virginia, found unreasonable, and a fare of 10 cents prescribed for future.

Frank Fuller for complainant.

John S. Barbour for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This petition puts in issue the reasonableness of defendant's single-trip fare from Washington, D. C., to Four Mile Run, St. Elmo, St. Asaph, Mount Ida, and Del Ray, in Virginia. The complainant is a resident of Del Ray, and brings this proceeding on behalf of himself and others similarly situated. The gravamen of the complaint is that the fares mentioned are equal to those applying from Washington to Alexandria, Va., although the distance to Alexandria is about 2 miles more than the average distance between Washington and the group of towns above mentioned, which are intermediate to Alexandria.

The defendant is an electric railway company engaged in the carriage of passengers and property between points in Virginia and Washington, D. C. Its tracks extend from Twelfth street and Pennsylvania avenue, in the city of Washington, south and west through the city to the Potomac River, which they cross by means of what is known as the Highway Bridge. From the south end of that bridge the line runs through a portion of the state of Virginia to the city of Alexandria, and thence to Mount Vernon. The distance from the terminus in Washington to the terminus in Alexandria is 7.5 miles. From the Washington terminus to Four Mile Run the distance is shown by the defendant's time table to be 4.1 miles. The distance to

Del Ray, the farthest point named, is 5.5 miles. The average distance to the several points involved is said to be 5 miles.

The passenger fares are based upon a group or zone system. The first zone extends from the Washington terminus to the south end of the highway bridge, a distance of about 1.5 miles, and within this zone the single-trip fare is 5 cents. The second zone extends from the south end of the highway bridge to Addison, a further distance of 2 miles. The single-trip fare between this zone and Washington is 10 cents. The remainder of the line to and including Alexandria constitutes a third zone of about 4 miles. The single-trip fare between this zone and Washington is 15 cents. There is no station between Addison and Four Mile Run. At the latter point there is only the power plant of the railway company. Consequently, although passenger fares are established to and from Four Mile Run, there is little demand for such fares; and the next station beyond, which is St. Elmo, is the first station within the Alexandria zone to and from which there is travel.

In addition to the single fare of 15 cents defendant has established the following round-trip and commutation fares between Washington and points in the Alexandria zone: Round trip, 25 cents; 8 single trips, 90 cents; 25 single trips, \$2.50; and 52 single trips, \$4.05, good within a calendar month and not transferable. Applied to the average distance of 5 miles between Washington and the stations mentioned in the complaint the fares above specified produce approximately the following revenue per passenger-mile: Single trip, 3 cents; round trip, 2.5 cents; 8 trip, 2.25 cents; 25 trip, 2 cents; 52 trip, 1.5 cents.

The line of the defendant has been in operation 14 years. It was established primarily to furnish service between Alexandria and Washington, in competition with the Southern Railway and with ferryboats plying on the Potomac River. Apparently the road has been economically and efficiently managed, and the service rendered by it to the communities along its line seems to be adequate and convenient. At present it operates 73 north-bound and 72 south-bound trains per day.

As has been noted, the average distance from Washington to Four Mile Run, St. Elmo, St. Asaph, Mount Ida, and Del Ray is about 5 miles. An examination of the fares of other suburban lines entering Washington shows that generally for similar or even greater distances the single fare is 10 cents. That fare would give defendant substantially the same revenue per passenger-mile as it receives under the 15-cent fare to Alexandria. The defense presented by the railway company may, in a general way, be divided into three heads. First, it is asserted that the passenger travel from the complaining towns is light and therefore a somewhat higher fare

is justified than would be maintained if the traffic were of greater density. Second, that any reduction in fares is unwarranted because "it is only within the last few years that the stock of this railroad has ever paid any dividends, and those paid have been very meager, and have recently been reduced, if not abandoned altogether." Third, it denies in its answer that it is subject to the act to regulate commerce.

Defendant estimates that during 1909 there were 55 passengers per day, or 20,075 trips for the year, between Washington and the group of stations in question, as compared with about 575 passengers per day, or 200,000 trips per year, between Alexandria and Washington. Defendant argues that the passenger revenue derived from these small communities does not pay for the service rendered and that they are the beneficiaries of the facilities provided to accommodate the heavy passenger travel between Washington and Alexandria. This may well be true, and yet have no bearing upon the reasonableness of the present charge. Certainly it ought not to be expected that these communities should bear an undue portion of the cost of a transportation service designed, and for the most part used, to meet the requirements of other and larger communities; nor does the fact that defendant, in order to furnish adequate service to the large cities at its termini, operates through these towns many more trains than are necessary to their needs, warrant the exaction of a charge in proportion to the frequency of the service incidentally furnished. It might well be assumed that inasmuch as the present service must be maintained to accommodate the travel between Washington and Alexandria any additional traffic secured from the intermediate points is in the nature of a net gain to the carrier.

An examination of the defendant's annual reports to the Commission for the years in which such reports have been made (1908, 1909, and 1910) fails to indicate that its financial condition is so distressing as is suggested in its brief. The total capital issued against its 19 miles of line up to June 30, 1910, is \$3,950,000 or \$207,894.74 per mile of line, composed of \$2,450,000 5 per cent bonds secured by a mortgage on the entire property, of which \$115,000 is held in the treasury, and \$1,500,000 of capital stock. Neither the amount of money invested in the property devoted to the service of the public, nor the consideration received from the sale of stocks and bonds is disclosed; and in the absence of explanation, this seems plainly a case of gross overcapitalization. In 1908 defendant paid the interest on its bonds, 1 per cent dividend on its capital stock, and carried forward a net surplus for the year of \$17,452.21; in 1909 the interest charges were paid, the dividend was increased to 2 per cent, and the net surplus for the year was \$29,193.19; in 1910 it again paid interest charges, 2 per cent on its stock, and carried forward a net surplus for the year of \$53,466.41. In that year its net

income was \$83,466.41, of which \$30,000 was devoted to dividends and \$53,466.41 was credited to the accumulated surplus. Therefore, had no addition been made to the existing surplus of \$265,595.39, it could have paid a 5 per cent dividend on its \$1,500,000 of stock as well as the 5 per cent interest upon the bonds. Assuming that the actual investment in the property is \$50,000 per mile of line, or \$1,000,000 in all, the earnings in 1910 were sufficient, after laying aside a surplus, to return about 16 per cent upon the investment. Again assuming that all of the 20,000 trips between Washington and the communities involved had been under a 10-cent fare, and none of such trips under round-trip or commutation fares, the net loss to defendant would have been \$1,000; and it would still have been able to meet interest charges on its large capital, pay all operating expenses, declare a dividend of 2 per cent on its stock, and lay aside a surplus of more than \$52,000.

Although defendant asserts in its answer that it is not subject to the act to regulate commerce, the point is not mentioned in its brief and we do not understand that it seriously presses the matter. Defendant is, beyond question, a common carrier by railroad of passengers and property between points in the state of Virginia and points in the District of Columbia, and therefore is subject to the statute here invoked. It files tariffs and statistical reports in accordance with the act and seems heretofore to have considered itself subject to the jurisdiction of the Commission.

Upon consideration of all the facts disclosed by the record, as well as our examination of other circumstances and conditions pertinent to the issues involved, it is our opinion, and we so find, that defendant's single-trip fare of 15 cents for the transportation of passengers from Washington to Four Mile Run, St. Elmo, St. Asaph, Mount Ida, and Del Ray is unjust and unreasonable, and that for the future it ought not to exceed 10 cents. An order will be entered accordingly. From complainant's testimony and brief we infer that he intended to attack the fares from the Virginia points to Washington, although the language of the petition does not specifically mention those fares, but we assume that defendant will reduce them in accordance with our conclusion herein.

No. 3886.
BROWNE GRAIN COMPANY
v.
FORT WORTH & RIO GRANDE RAILWAY COMPANY
ET AL.

Submitted November 15, 1910. Decided March 11, 1911.

Class rate of 56 cents per 100 pounds applied on shipment of corn shucks from Alexandria, La., to Brownwood, Tex., via a route 911 miles in length, not found to be unjust or unreasonable.

E. P. Browne for complainant.

W. C. Preston and *J. L. Lockett, jr.*, for Fort Worth & Rio Grande Railway Company and St. Louis & San Francisco Railroad Company.

W. F. Dickinson and *J. C. McCabe* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a partnership located at McKinney, Tex., engaged in the wholesale grain business, and files its petition for reparation in the sum of \$82.60 on account of an alleged unreasonable and unjustly discriminatory charge by defendants for transportation of a carload of baled corn shucks shipped from Alexandria, La., to Brownwood, Tex., October 29, 1909. It is alleged that the rate charged, 56 cents per 100 pounds, was excessive so far as it exceeded a rate of 20 cents, which was established shortly after the shipment moved.

The shipment weighed 14,700 pounds, and charges aggregating \$112, based on a minimum weight of 20,000 pounds at rate of 56 cents, were collected. The traffic was delivered by complainant to the Chicago, Rock Island & Pacific Railway Company at Alexandria for transportation to Brownwood, Tex., without routing instructions beyond the line of that company, which thereupon forwarded the car via the route over which the 56-cent rate was applicable in connection with its own line as the initial carrier. The car moved north over the Rock Island to Little Rock, Ark., thence west over the St. Louis & San Francisco to Holdenville, Okla., and south over the same line to Fort Worth, Tex., and thence to Brownwood over the Fort Worth & Rio Grande Railway, a distance of 911 miles. Inasmuch as the rate via all routes was 56 cents, it was immaterial to

complainant over which roads the shipment moved. A much more direct route would have been obtained had complainant employed as the initial carrier the Texas & Pacific Railway, which extends westward from Alexandria, instead of the Rock Island, whose lines extend northward.

On March 20, 1910, a commodity rate of 20 cents per 100 pounds, via the route traversed as well as the shorter routes, was established with minima graded to length of car, the minimum for the car in question being 19,000 pounds. On September 20, 1910, the application of this rate via the circuitous route taken by complainant's shipment was canceled, leaving the class rate again in force. Defendants assert that it was not their intention to make the 20-cent rate from Alexandria to Brownwood applicable via the route of this shipment; that the establishment of the rate was due to an error in publishing the tariff; and that it was eliminated as soon as discovered. While not combating its reasonableness as applicable via the more direct routes, which range in distances from 494 to 722 miles, they state that the earnings via the longer route of 911 miles would be unremunerative. The earnings per car on 20,000 pounds of corn shucks at the 20-cent rate are \$40, or 4.39 cents per car-mile over the route taken, as against earnings of 8.1 cents for the more direct route via the Texas & Pacific. The average receipts per ton per mile for all traffic in Texas, Louisiana, and part of New Mexico, for the year ended June 30, 1909, were 1.070 cents, and for the whole United States 0.763 of a cent. Even considering the quality of the commodity, the revenue of 4.3 mills per ton per mile via defendants' route under a 20-cent rate would appear to be lower than we would feel justified in requiring.

Complainant refers to the fact that there was at the time of shipment a rate of 20 cents applicable on hay, an article analogous to corn shucks, in the opposite direction, or from Brownwood to Alexandria, but this rate was over the shorter routes. At the time of the hearing the rate on corn, carloads, from Alexandria to Brownwood was 20 cents per 100 pounds, but defendants assert that they also intend to cancel the application of that rate via the long route, inasmuch as they do not consider the traffic desirable. The rate of 20 cents per 100 pounds, on a car of corn loading from 60,000 to 100,000 pounds, would yield car earnings of from \$120 to \$200. The earnings on a 20,000-pound car of corn shucks at 56 cents would be but \$112.

We are not convinced that the charges assessed were unreasonable for the service performed, or that they were unduly discriminatory, and the prayer for reparation is therefore denied. The shorter through routes still maintain the 20-cent rate, and therefore no order for the future is required. An order will be entered dismissing the complaint.

No. 3471.

W. E. CALDWELL COMPANY

v.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY
COMPANY ET AL.

Submitted November 26, 1910. Decided March 11, 1911.

1. Joint rates on tank material, Louisville, Ky., to Shawano, Wis., Combined Locks, Wis., and West Port Arthur, Tex., found unreasonable so far as they exceeded combination of intermediate rates contemporaneously in force. Reparation awarded.
2. Differences in value of articles offered for transportation can not be precisely reflected in the comparatively small number of classes now used for rate-making purposes; and in the absence of a showing that the rate resulting from the classification is unreasonable or otherwise unlawful, it must fairly appear that a particular article is not rated with other articles similar in value, weight, and other essential transportation qualities, before the Commission will require a change in the classification. Application of fifth class rates to wooden tank material (in the white) in Official Classification territory not found unreasonable.

G. M. Stephen for complainant.

W. A. Northcutt for Louisville & Nashville Railroad Company.

Edward Barton for Baltimore & Ohio Southwestern Railroad Company.

L. T. Wilcox for Morgan's Louisiana & Texas Railroad & Steamship Company.

Frank L. Littleton for New York Central Lines.

Attila Cox, jr., for Chicago, Indianapolis & Louisville Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged at Louisville, Ky., in the manufacture of wooden tanks and tank material. By a petition, filed August 23, 1910, and an amendment thereto, filed August 26, 1910, it alleges that unreasonable rates were charged by defendants for the transportation of certain shipments of wooden tank material and steel tower material from Louisville to points on defendants' lines. The basis for the several allegations of the petition will be more

I. C. C. Rep.

particularly described in connection with the facts respecting the shipments involved. Reparation is asked.

On August 20, 1908, complainant shipped from Louisville, Ky., to Shawano, Wis., over the Chicago, Indianapolis & Louisville Railway and Chicago & North Western Railway, a carload of wooden tank material, weight 30,000 pounds, upon which freight charges were collected in the sum of \$103.50, based on the joint fifth class rate of 34.5 cents per 100 pounds. At the same time there was applicable to wooden tank material a combination of intermediate rates of 26.5 cents, composed of the fifth class rate of 18 cents, Louisville to Milwaukee, and the class-D rate of 8.5 cents, Milwaukee to Shawano.

After filing of complaint and before hearing in this case the Chicago & North Western Railway Company made refund to complainant on the erroneous assumption that a joint through commodity rate of 19.1 cents was applicable. Our conclusion is that the rate of 34.5 cents exacted by defendants was unreasonable to the extent that it exceeded the combination of intermediate rates, amounting to 26.5 cents. It follows that a reasonable charge for the service would have been \$79.50. If complainant has not already done so, it should at once return to the Chicago & North Western Railway Company \$22.20 of the refund already received through the error of that company, and the entry of an award of reparation will be unnecessary. Defendants will be required to establish and maintain for two years a rate for the transportation of wooden tank material in carloads from Louisville to Shawano, not in excess of the contemporaneous combination of intermediate rates upon Milwaukee.

On March 11, 1910, complainant shipped from Louisville, Ky., to Combined Locks, Wis., over the Pittsburg, Cincinnati, Chicago & St. Louis Railway and Chicago & North Western Railway, one carload of wooden tank material, weight 30,000 pounds, upon which freight charges were collected in the sum of \$94.50, based on the joint through fifth class rate of $31\frac{1}{2}$ cents. At the same time there was a commodity rate of 14 cents on wooden tank material, minimum carload weight 30,000 pounds, Louisville to Milwaukee, and a class-D rate of 7 cents, minimum carload weight, 36,000 pounds, on the same material, Milwaukee to Combined Locks. We find that the rate assessed upon this shipment was unreasonable so far as it exceeded the combination of intermediate rates, amounting to 21 cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$27.30, with interest from March 23, 1910. An order will be entered awarding reparation and requiring defendants to maintain for the future rates not in excess of the contemporaneous intermediate rates.

On March 30, 1909, complainant shipped from Louisville to West Port Arthur, Tex., over the Louisville & Nashville Railroad, Morgan's

20 I. C. C. Rep.

Louisiana & Texas Railroad, and Texas & New Orleans Railroad, 1,180 pounds of steel tower material and 2,500 pounds of wooden tank material, upon which freight charges were collected in the sum of \$38.71, based upon joint third class rate of \$1.18 per 100 pounds for the steel tower material and a similar fourth class rate of \$1.07 for the wooden tank material. At the rates named the total charges should have been \$40.67, and there appears to have been an undercharge of \$1.96. When this shipment moved, there was a less-than-carload special iron commodity rate of 30 cents, Louisville to New Orleans, applicable to tank towers, knocked down, and a third class rate of 58 cents on the same material, New Orleans to West Port Arthur, the combination of intermediate rates so made amounting to 88 cents; there was also a combination of intermediate rates applicable to wooden tank material amounting to 81 cents, composed of the sixth class rate of 35 cents, Louisville to New Orleans, and the fourth class rate of 46 cents, New Orleans to West Port Arthur. We find that the rates exacted for transportation of the steel tower material and wooden tank material were unreasonable so far as they exceeded 88 cents and 81 cents, respectively, and that complainant is entitled to reparation in the sum of \$8.08, with interest from April 15, 1909. Defendants have proposed, by tariffs now under suspension pending investigation by the Commission, to advance the special iron rate of 30 cents and sixth class rate of 35 cents, Louisville to New Orleans, to 35 cents and 40 cents respectively. An order will be entered requiring defendants to maintain for the future rates not in excess of the contemporaneous intermediate rates.

On August 29, 1908, complainant shipped a carload of wooden tank material from Louisville to Elkhorn, W. Va., and on August 26 and 29, and October 8, 1909, respectively, three carloads of wooden tank material from Louisville to Potsdam, N. Y. Charges were collected at the fifth class rates of 29 cents to Elkhorn and 35 cents to Potsdam. Complainant asks reparation on basis of the sixth class rates contemporaneously in effect, upon the ground that wooden tank material ought to be given sixth class rates in Official Classification territory. Its contention in this respect is based upon a comparison of wooden tank material with certain other articles which are given sixth class rates.

Lumber in carloads is given a sixth class rating in Official Classification territory between points where commodity rates have not been established; and, generally speaking, articles of comparatively low value, manufactured from lumber, are given sixth class rates, in carloads, "in the rough," and fifth class rates when "in the white." The following articles are examples of those so classified: Agricultural implements and machine parts, and stock or stuff; plow beams

and handles; furniture parts; chair stuff or stock; table stock or stuff; sucker rod; pump curb material; billiard cue wood; clothes wringer wood; door or window frame wood; reel wood; tank and tower material. Complainant calls attention to the fact that whisky barrel staves and beer kegs, more valuable per unit of weight than wooden tank material, are given sixth class rates.

The wooden tank material shipped by complainant consisted of staves planed and grooved, with necessary iron hoops, so that the only labor necessary to erect the tank was to fit the staves together and attach the iron bands. Complainant did not disclose the invoice price of its tank material, but its witness stated that the tank material as shipped was worth about 150 per cent of the value of the lumber from which it was made; that is to say, yellow-pine lumber costs complainant at Louisville about \$30 per 1,000 feet and the cost of transforming the lumber into tank material is about \$15 per 1,000 feet.

Defendants' witness, the chairman of the Official Classification Committee, stated that he had made an investigation of the values of a number of articles which come within the general description of cooperage stock; that he had been quoted a price of \$170 on a tank 12 feet high by 16 feet in diameter, made of 3-inch white pine and weighing 6,000 pounds; and a price of \$450 on a tank 16 feet high by 24 feet in diameter, made of 3-inch cedar and weighing 15,000 pounds. From this and numerous other instances given, he estimated that the average value of tank material is approximately 3 cents per pound as compared with an average value for the general run of cooperage stock of 1 cent per pound.

So long as the thousands of articles offered for transportation are divided into a comparatively small number of classes for rate-making purposes, it is obvious that minute variations in value of different articles, or dissimilar values of the same article, can not be precisely reflected in the classification. In the absence of evidence that the rate resulting from the classification is unreasonable or otherwise unlawful, it must fairly appear that a particular article is not rated with other articles similar in value, weight, and other essential transportation qualities, before the Commission will require a change of classification. In the present case there was no evidence that the rates charged were unreasonable for the service performed, or that they subjected complainant or its traffic to undue discrimination. Upon the facts now before us we hold that the application of fifth class rates to wooden tank material in Official Classification territory is not unreasonable, and the relief prayed by complainant in that respect must be denied.

No. 3537.

CLINTON BRIDGE & IRON WORKS

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

Submitted December 14, 1910. Decided March 11, 1911.

Where a shipper, without disclosing to a carrier the character or size of its shipment, orders a particular kind of equipment, loads its traffic thereon, and directs transportation of the shipment as loaded, it must pay the rate lawfully applicable to the class of equipment used, although a lower rate would have been available had the freight been loaded in another kind of car. Complaint dismissed.

G. M. Stephen for complainant.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with principal place of business at Clinton, Iowa. Its petition, filed September 16, 1910, alleges that an unreasonable charge was exacted by defendant for interstate transportation of a shipment of iron bridge material from Clinton to St. Marys, Iowa. Reparation is asked.

The shipment was made May 28, 1909, and weighed 5,642 pounds. Freight charges were collected in the sum of \$28.25 at the first class rate of 56.5 cents upon a weight of 5,000 pounds, in accordance with Rule 17-A of Western Classification, the pertinent portion of which is as follows:

Shipments * * * loaded on open cars are subject to a minimum charge equal to that for 5,000 pounds, at first class rate for each car used.

The contention of complainant is that the fourth class rate of 25½ cents, which would have made a charge of \$14.39, should have been assessed upon the actual weight, upon the theory that the rate was exacted in conformity with Rule 17-B of the classification, which provides a minimum charge of first class rate upon 5,000 pounds in case the articles are too large to be loaded through the side door of a 36-

foot box car or too long to be loaded through the end window thereof, and it cites *Jones v. So. Ry. Co.*, 18 I. C. C. Rep., 150, and *Houston Structural Steel Co. v. Wabash R. R. Co.*, 18 I. C. C. Rep., 208. But upon the facts disclosed by the record the case does not come within the principle announced in those cases.

The longest articles in this shipment were four tubes 20 feet long, which could have been loaded into the side door of a 40-foot car or the end window of a 36-foot car; and therefore, had the shipment been delivered to defendant for loading, it would have been under the duty of shipping it in the manner which would have resulted in application of the lowest rate. Complainant's iron works are connected with defendant's railroad by a sidetrack. Defendant's testimony is that on May 25, 1909, complainant ordered by telephone a 34-foot flat car from the agent at Clinton. Not having a flat car at hand, defendant placed a gondola car, upon which complainant loaded the shipment and directed that it be forwarded to destination.

There was an attempt to rebut the evidence of an order for a flat car by the introduction of an affidavit, made by the secretary of the complainant company, in which he states "that while the affiant is unable to submit documentary proof he believes and is firmly convinced that he did not order for loading this shipment a flat car, gondola car, or other so-called open car; that to the best of his knowledge and belief neither did any other employee or officer of said Clinton Bridge & Iron Works order such flat, gondola, or open car." It does not appear that it was the duty of this officer to order cars, or that he customarily has knowledge of such orders when made. His "best knowledge and belief," therefore, may not be of much value as evidence of what was actually done. The witness for complainant was not one of its employees, and had only such knowledge of the facts as had been transmitted to him by complainant. We have in another case had occasion to comment upon the unpersuasiveness of this kind of evidence. *Lambros v. C., M. & St. P. Ry. Co.*, Unreported Opinion, No. 315. Defendant's witness had no personal knowledge of the transaction, but presented a letter from the local agent at Clinton transmitting two leaves taken from what purports to be a daily order book, in which he entered orders by telephone and otherwise. These leaves had upon them the orders for two days, the 25th and 26th of May, and show, in regular course, entry of an order by the complainant for a 34-foot flat car. There also appears another order by complainant upon the same date for a box car to be sent to this switch; on these items is the mark "O. K," which, the witness said, means that the orders were filled. The undisputed fact is that the open car was placed upon the switch, and that the shipment was loaded into it and ordered forwarded by the complainant. The com-

plainant did not offer any evidence showing any other order regarding the shipment. Certainly some order must have been given. In the absence of any other proof we must conclude, from the evidence and admitted facts, that complainant ordered an open car, and in doing so did not disclose to the defendant company the character or size of the shipment.

There are other considerations than the amount of the rate that sometimes determine a shipper's choice of facilities. For instance, it is easier to load and unload certain kinds of freight onto and from an open car. This may have been the reason which induced the complainant to order a flat car. The route traversed was 305 miles, and the charge is not in itself unreasonable, considering the equipment ordered.

Upon all the facts of record in this case we find that the rate charged was in accordance with the rule of the Western Classification and the tariff in force at the time, and complainant's failure to secure the application of a lower available rate was due to its own action and not to failure by the defendant to discharge its duty. The complaint will be dismissed.

20 I. C. C. Rep.

No. 3624.
DELLS PAPER & PULP COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted December 12, 1910. Decided March 11, 1911.

Where a tariff provides different rates for property dependent on the value thereof and requires that the invoice value shall be stated and receipted for in order to secure the lower rate, the complainant must show that the requirements of the tariff were complied with, or that they were unreasonable, before reparation will be awarded on account of application of higher rate to a shipment the value of which did not exceed that upon which a lower rate would have applied had the value been disclosed to the carrier. Complaint dismissed.

W. D. Hurlbut for complainant.

C. C. Wright for Chicago & North Western Railway Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

George H. Hamilton for Kansas City Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation with principal office at Eau Claire, Wis. Its petition, filed October 26, 1910, alleges that it was charged an unreasonable rate for the transportation of one carload of news-print paper from Combined Locks, Wis., to Dallas, Tex. Reparation is asked.

In December, 1909, complainant shipped one carload of news-print paper (not printed) over defendants' lines from Combined Locks to Dallas. The weight of the shipment was 37,585 pounds, and freight charges were collected in the sum of \$291.77 at a rate of about 77.63 cents per 100 pounds, which rate we have been unable to verify. When this shipment moved defendants' tariffs provided a rate of 69 cents, Combined Locks to Dallas, on printing paper in carloads, "invoice value not exceeding 3½ cents per pound and so receipted for,"

and a rate of 85 cents on printing paper, "invoice value exceeding 3½ cents per pound, or invoice value not receipted for." This latter rate was lawfully applicable to the shipment. The present rate for paper of the higher value, or "value not receipted for," is 79 cents. There is an uncollected undercharge of \$27.70.

It is admitted that this shipment was not receipted for at a particular value, that its value was less than 3½ cents per pound, but that the value was unknown to the carrier. There was no evidence tending to show that the carrier was at fault in any way, or any explanation of complainant's failure to insert the invoice value in the bill of lading as required by the tariff, although it does appear that complainant was well advised as to this requirement. The sole ground upon which recovery is sought is that inasmuch as the value of the paper was in fact less than 3½ cents per pound, it was entitled to the 69-cent rate.

Value is one of the factors upon which rates are based, and where a tariff provides different rates for property dependent upon the value thereof and requires that the invoice value shall be stated and receipted for in order to secure the lower rate, the complainant must show compliance with the requirement of the tariff, or that such requirement is unreasonable, before reparation will be awarded on account of application of higher rate to a shipment whose value did not exceed that upon which a lower rate would have applied had the value been disclosed to the carrier. In the absence of any claim or evidence that the condition here in question is unjust, the complaint will be dismissed.

No. 3444.

GAMBLE-ROBINSON FRUIT COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted January 10, 1911. Decided March 11, 1911.

Rates of \$1.79, \$1.75½, and \$1.35 per 100 pounds on citrus fruits in carloads from Redlands, Prenda, Pachappa, Arlington, and Porterville, Cal., to Miles City, Mont., found unreasonable so far as they exceeded rate of \$1.15 subsequently established. Reparation awarded.

Walter Holsinger and Fred H. Stinchfield for complainant.

Emmerson Hadley for Northern Pacific Railway Company.

F. C. Dillard, W. W. Arthur, and L. T. Wilcox for Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale and commission fruit and produce business, with offices and warerooms at Miles City, Mont. The petition, filed August 2, 1910, puts in issue the reasonableness of freight charges on certain carload shipments of citrus fruit from various points in California to Miles City. Reparation is asked.

The record shows that between February 20, 1909, and August 17, 1910, complainant caused to be shipped over defendants' lines from certain California points to Miles City, 20 carloads of citrus fruits, on which freight charges were exacted by defendants at rates of \$1.79 per 100 pounds on the first car, \$1.75½ on the next three cars, and \$1.35 on each of the other cars. Five of said cars were not mentioned in the petition, but at the hearing it was agreed by all parties except the Atchison, Topeka & Santa Fe Railway Company, which was not represented, that they might be considered as included in the case. Since the hearing the Santa Fe Company has also joined in this agreement, and said shipments will therefore be treated as though formally presented by amended petition. The total charges amounted to \$8,115.07, and complainant alleges that they were excessive, unjust, and unreasonable to the extent that they exceeded what they would have been at a rate of \$1.15 per 100 pounds.

The shipments involved, the respective points of origin, dates of movement, weights, charges, and amount of reparation claimed, are stated in the following table:

Point of origin.	Date of movement.	Weight.	Amount charged.	Reparation claimed on basis of rate of \$1.15 per 100 pounds.
		<i>Pounds.</i>		
Redlands, Cal.....	Feb. 20, 1909	28,300	\$506.57	\$181.12
Prenda, Cal.....	Apr. 7, 1909	28,324	497.09	171.37
Do.....	June 5, 1909	27,760	487.19	167.94
Do.....	June 24, 1909	27,650	485.24	167.28
Pachappa, Cal.....	July 23, 1909	27,648	373.25	55.30
Arlington, Cal.....	Aug. 11, 1909	28,080	379.08	56.16
Do.....	Sept. 14, 1909	28,160	380.16	56.32
Porterville, Cal.....	Dec. 15, 1909	28,656	386.85	57.31
Arlington, Cal.....	Jan. 7, 1910	27,648	373.25	55.30
Do.....	Feb. 21, 1910	28,080	379.10	56.16
Prenda, Cal.....	Mar. 23, 1910	28,512	384.91	57.02
Do.....	Apr. 9, 1910	28,080	379.10	56.16
Do.....	Apr. 20, 1910	29,520	398.52	59.04
Do.....	May 3, 1910	29,376	396.58	58.75
Do.....	May 28, 1910	28,432	383.83	56.86
Do.....	June 11, 1910	28,512	384.91	57.02
Arlington, Cal.....	June 28, 1910	28,352	382.75	56.70
Do.....	June 30, 1910	29,376	396.58	58.75
Prenda, Cal.....	July 29, 1910	27,648	373.25	55.28
Arlington, Cal.....	Aug. 17, 1910	28,656	386.86	57.32
Totals			8,115.07	1,597.16

On the dates the first four shipments moved there was no joint rate over defendants' lines applicable to the traffic from the points of origin to Miles City, and combinations of intermediate rates were applied. By tariff effective June 30, 1909, a through rate of \$1.35 was established, which was applied to the later shipments. By supplement to that tariff, effective December 10, 1910, a joint commodity rate of \$1.15 was provided. The Northern Pacific Railway Company agreed at the hearing that the rate of \$1.35 on citrus fruits was unreasonable. The other carriers did not so agree, and considerable testimony was introduced by complainant in support of its contention. For a number of years a blanket rate of \$1.15 has been maintained from California points to eastern and intermediate points, and no reason appears why that rate should not have been given to Miles City.

Upon consideration of all the facts we are of opinion that the charges collected were unreasonable to the extent that they exceeded charges which would have accrued under a rate of \$1.15, and we so find. Reparation will be awarded in the sum of \$1,597.16, with interest from September 1, 1910, and defendants will be required to maintain for a period of two years a rate on citrus fruits in carloads from said California points to Miles City not in excess of \$1.15 per 100 pounds.

No. 8578.
RIVERSIDE MILLS
v.
GEORGIA RAILROAD ET AL.

Submitted February 1, 1910. Decided March 11, 1911.

An informal complaint showing date of shipment, weight, and rate charged, coupled with an allegation that the rate was unreasonable, is sufficient presentation of a claim to come within section 16 of the act. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, 18 I. C. C. Rep., 67, reaffirmed. For reasons stated in the report, complaint dismissed.

R. J. Southall for complainant.

R. Walton Moore for Georgia Railroad; Atlanta & West Point Railroad Company; and Western Railway of Alabama.

F. C. Dillard and *L. T. Wilcox* for Southern Pacific Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; and Galveston, Harrisburg & San Antonio Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with principal place of business at Augusta, Ga., and is engaged in the manufacture and sale of cotton waste. By complaint filed October 12, 1910, it alleges that defendants exacted from it unreasonable charges for transportation of a carload of cotton waste from Augusta, Ga., to Tonopah, Nev. The same subject matter was presented to the Commission informally under date of June 17, 1908. Reparation is asked.

On August 2, 1906, complainant shipped via the lines of defendants, from Augusta, Ga., to Tonopah, Nev., one carload of cotton waste weighing 24,100 pounds, upon which, on September 18, 1906, freight charges were collected in the sum of \$920.60; but at the rate of \$3.80, which defendants were attempting to apply, the charges would amount to only \$915.80. Complainant applied for a refund on basis of rate of \$3.02 which had been quoted it; and, on March 13, 1907, refund to this basis, or in the sum of \$192.81, was made by the Georgia Railroad. Early in 1908 the Georgia Railroad advised complainant that the lawful rate was \$3.80 and asked that repayment be

made of \$184.59 of the refund, admitting an overcharge of \$8.22. On basis of rate of \$3.80, the correct amount to be repaid would have been \$188.01. Complainant did not then make the repayment requested and under date of June 17, 1908, filed an informal complaint with this Commission asking, in effect, that we find to be unreasonable any rate in excess of \$3.02, and that it be not required to make any further payment. On April 10, 1909, complainant paid to the Georgia Railroad the \$184.59 demanded. The informal procedure was ineffective and the formal complaint resulted.

The statute of limitations was pleaded by several of the defendants who contended that because the informal complaint was not filed within six months after the shipment moved it was not before the Commission in such manner as to stop the running of the statute. There is no merit in this contention. Although the Commission has announced that ordinarily it will not award reparation upon informal proceedings unless the complaint is filed, or the rate complained of is reduced within six months after the traffic moved that rule is only an expression of the administrative discretion of the Commission and is confined to informal matters. It does not in any way modify the ruling heretofore made that an informal complaint showing the date of shipment, its weight, and the rate charged and collected, coupled with an allegation that the rate assessed was unreasonable, is a sufficient presentation of a claim to come within the provisions of section 16 of the act. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, 18 I. C. C. Rep., 67.

There was no joint through rate on cotton waste from Augusta to Tonopah when this shipment moved, nor has such a rate since been established. The shipment moved via Sacramento, Cal., Reno and Mina, Nev., and over this route the lowest combination was as follows:

Augusta, Ga., to Sacramento, Cal.....	\$1. 12½
Sacramento to Reno, Nev.....	. 87
Reno to Mina, Nev.....	1. 10
Mina to Tonopah, Nev.....	. 60
Through rate	3. 69½

This rate of \$3.69½ should have been applied and charges of \$890.50 collected. By the collection of \$912.38 complainant was overcharged \$21.88, which amount should be promptly refunded by defendants, with interest, without the requirement of order of the Commission. While the petition asked reparation to basis of rate of \$3.02, at the hearing complainant based its claim on a combination rate of \$3.24, which was effective as follows:

Augusta to Sacramento, Cal., effective June 5, 1909.....	\$1. 10
Sacramento to Tonopah, Nev., effective Jan. 20, 1910.....	2. 14
Through rate	3. 24

On January 2, 1911, the \$2.14 factor was reduced to \$1.79, making the present combination \$2.89. In *Traffic Bureau v. S. P. Co.*, 19 I. C. C. Rep., 259, the Commission reduced the fourth class rate, Sacramento to Reno, from 87 cents to 51 cents, and the present rate beyond Sacramento is apparently a readjustment of the through rate based upon that reduction.

Upon consideration of the entire record, we are not of opinion that reparation should be awarded in this case. Reparation was not awarded in connection with the general readjustment of class rates ordered in the *Traffic Bureau case, supra*. The rate beyond Sacramento was reduced more than three years after the shipment moved; and we are not satisfied that the rate when charged was so unreasonable that complainant is entitled to damages. As stated in *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C. Rep., 43, there is no presumption of law that a rate condemned as unreasonable, or reduced by a carrier on its own motion, has been unreasonable for any particular period in the past, and a rate reasonable when established may in course of time become unreasonable by virtue of changed circumstances and conditions. Consequently an award of reparation by no means necessarily follows the reduction of a rate, whether by the voluntary action of the carriers or by order of the Commission. Upon receipt of satisfactory evidence that the overcharge above mentioned has been refunded to complainant, the complaint will be dismissed.

20 I. C. C. Rep.

No. 3053.
IN THE MATTER OF RESTRICTED RATES.

Submitted November 3, 1910. Decided February 24, 1911.

1. The Commission adheres to its ruling that "a tariff providing for reduced rates on coal used for steam purposes, or that the carrier will refund part of the regular tariff charges on presentation of evidence that the coal was so used, is improper and unlawful—that is to say, that the carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put in order to enjoy a transportation rate."
2. It also adheres to its ruling that "a carrier, or a person or corporation operating a railroad or other transportation line may not, as a shipper over the lines of another carrier, be given any preference in the application of tariff rates on interstate shipments, but it may lawfully and properly take advantage of legal tariff joint rates applying to a convenient junction or other point on its own line, provided such shipments are consigned through to such point from point of origin and are, in good faith, sent to such billed destination."
3. Carriers ordered to cease and desist from maintaining tariffs which contain rates applicable only upon shipments for a particular consignee or when the commodity transported is for a particular use, or rates that are restricted to the use of certain shippers and not open to all shippers alike.

John H. Marble for the Commission.

George S. Patterson for Pennsylvania Railroad Company.

William Irvine Cross and *W. A. Parker* for Baltimore & Ohio Railroad Company.

W. M. Duncan for Wheeling & Lake Erie Railroad Company.

R. W. Davis and *Samuel M. Havens* for Buffalo, Rochester & Pittsburg Railway Company.

C. B. Heiserman and *Jas. P. Orr* for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

Guy Wellman and *Harry I. Miller* for Buffalo & Susquehanna Railway Company.

Frederick W. Frost for Pittsburg, Shawmut & Northern Railroad Company.

H. A. Taylor for Erie Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

In the territory east of Illinois and north of the Ohio River carriers quite generally have followed the practice of filing and using tariffs

which named rates for the transportation of coal when for railroad use lower than the rates applicable to the transportation of commercial coal between the same points. The underlying question has been before the Commission in various forms many times and this proceeding was instituted by the Commission for the purpose of considering it at this time and in a formal way. The Pennsylvania Railroad Company and the Baltimore & Ohio Railroad Company were made defendants to this proceeding, but numerous other railroads have intervened, so that most of the coal-producing railroads in the east are parties, as well as some railroads which do not originate their own fuel supply.

The tariffs referred to vary greatly in their definition or description of the transportation covered thereby. Sometimes it is provided that the rate will apply to coal when consigned to a particular junction point to a named railroad company; sometimes when for use upon the locomotives of a named railroad; sometimes when for railroad purposes. The question for consideration therefore is whether or not a railroad may grant rates applicable to the transportation of property consigned to a railroad company, or for railroad use, different from the rates contemporaneously applied to the transportation of the same commodity between the same points when consigned to or for the use of others than railroad companies.

In February and November, 1908, the Commission issued the following conference rulings:

A tariff providing for reduced rates on coal used for steam purposes, or that the carrier will refund part of the regular tariff charges on presentation of evidence that the coal was so used, is improper and unlawful—that is to say, that the carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put in order to enjoy a transportation rate.—*Rule 34, Conference Rulings Bulletin No. 4.*

A carrier, or a person or corporation operating a railroad or other transportation line, may not, as a shipper over the lines of another carrier, be given any preference in the application of tariff rates on interstate shipments, but it may lawfully and properly take advantage of legal tariff joint rates applying to a convenient junction or other point on its own line, provided such shipments are consigned through to such point from point of origin and are, in good faith, sent to such billed destination.—*Rule 225, Conference Rulings Bulletin No. 4.*

We now have for consideration the soundness of those conclusions.

As indicating the different phases of this question that have come to us it may be instructive to note that we have upon requests for rulings at different times held that a tariff which limited the application of the rates shown therein to shipments handled by steam power, thus excluding shipments handled by electric power, was unlawful; that where stock in one railway company is owned by another railway company, but both maintain separate organizations and report separately to the Commission, they may not lawfully carry

freight free for each other; that a passenger fare tariff offering season excursion fares for schools and different fares between the same points for societies was discriminatory; that property for use in eating houses maintained by carriers for passengers and employees may properly be regarded as necessary and intended for the use of such carriers in the conduct of their business, but that persons and commodities transported for use in serving others than passengers and employees of the carriers may not lawfully be carried except under regular tariff rates; that a carrier may not lawfully transport free or at reduced rates materials for building or repairs on a refrigeration plant built under contract with the carrier, but which also engages in commercial ice business; that the Commission would not give its sanction to an arrangement for lease by an interstate carrier of trackage rights over a short connecting line to a quarry for the purpose of hauling from that quarry with its own crews and equipment ballast for use on its line, the arrangement being regarded as a mere device to evade the payment of lawful rates, which would necessarily result in unjust discrimination against other stone quarries on the line of the lessor road; that it is unjustly discriminatory against dealers on its line for an interstate carrier to operate a commissary car from which it furnishes and sells to its employees household supplies, wearing apparel, etc.

Apparently defendants do not contend that under the act to regulate commerce a railroad company as a shipper over the line of another railroad may claim or be accorded any preferential rates. They argue that the system of special fuel rates was adopted for the purpose of making the freight charges to the junction point specific and public, thereby putting coal operators on an equality with each other in bidding upon fuel contracts.

It is stated that it frequently happens that where the joint rate is the same from the mines in a given group the divisions of that rate between the carriers are different, depending upon which mine the shipment moves from, and that under a division of rates on a mileage prorate basis the division of the consuming road is greater on shipments from the nearest mine than on shipments from the more distant mines. Coal is generally bought by the consuming road f. o. b. the mine and, the quality of the coal being the same, obviously that railroad would pay more for coal at the mine from which its division of the rate would be greatest, its haul in either case being the same. This, it is argued, would give the near-by mine an advantage over more distant mines in the same group, while the price obtainable for commercial coal in the same market would be identical. It is stated that since the operators of these mines do not necessarily know the exact divisions of the joint rates they would not be on a parity with each other in seeking fuel contracts.

It is also argued that producers upon different lines of railroad often compete through the same junction point or points for the coal supply of a given railroad, and that inasmuch as divisions of joint rates are questions of barter between the carriers it is evident that even though the rates from points of production to the coaling station upon a consuming road were the same, the divisions might be different and the cost of transportation to the consuming road differ. It is stated that in order that the operators in the different fields might know as to the relation of rates from those fields the system of special fuel rates to the junction points was adopted. Defendants' witnesses testify that coal operators prefer a continuance of the present method of publishing these rates, but no operators appeared at the hearing to testify.

It is said that before the establishment of the present system of tariffs manipulations of various kinds under the old method of constructing rates had prevented the maintenance of the integrity of the rates. That, however, was at a time when "manipulations of various kinds" were epidemic and general.

Ordinarily the divisions of joint rates are not published and are subject to change by mutual agreement of the carriers. It is therefore suggested that a railroad might purchase its coal upon the understanding that it would make a certain division with the originating line different from that in effect at the time of the purchase, and that divisions might be altered for the purpose of varying the rate which the consuming road pays for transportation to the junction point.

The ingenuity of lawmakers has never yet produced a statute that was immune from evasion or violation, and we are not disposed to give too much weight to suggestions of possibilities of unlawful acts. The law requires publication, observance, and maintenance of definite transportation charges. A joint rate is published as an entirety. The divisions of that rate are subjects of agreement between the parties thereto, but each of them is bound by law to collect and retain neither more nor less nor different compensation than its established division of that rate. If a carrier's officers are disposed to violate the law under one method of publishing rates, it may be assumed that the same disposition would be present under another method of publication.

It is stated that there is a competitive factor in the handling of railroad fuel coal which is not common to commercial coal, growing out of the fact that a railroad can receive coal intended for use upon its line at points widely separated. The Pere Marquette road is cited as an illustration. This road extends from Toledo, Ohio, where it connects with various coal-carrying roads from the Ohio, the Pennsylvania, and the West Virginia fields to Chicago, Ill., in the vicinity of which it connects with various lines serving the coal fields

of Indiana and Illinois. It receives a considerable part of its coal supply at Toledo, and a portion of it from the Illinois and Indiana fields at its west-end junctions. It also draws a portion of its supply from mines in Michigan. It is therefore said that these coals from these different localities compete for railroad use upon the lines of the Pere Marquette, while they do not compete in commercial use; that is, that the coal from Illinois and Indiana does not, for commercial purposes, enter Toledo and does not there come into competition with the Ohio and Pennsylvania coals, but that they do compete for use by that road at a point on the Pere Marquette midway between Chicago and Toledo. Obviously, coal from Chicago would not be brought to Toledo for commercial purposes, and it is equally obvious that it would not be hauled to Toledo for railroad purposes either. If the coal from Toledo and the coal from Chicago compete with each other for railroad purposes at a point midway between Chicago and Toledo they might in a relatively same degree compete with each other at the same point for commercial purposes.

On the practical side of this question it is seen that great quantities of coal are consumed by railroads. Some of the interveners assert that three-fourths of the product upon their lines is consumed by railroads, and with all coal-producing railroads this traffic is large in volume. It is said that the chief advantage of the present system is that the rates on this enormous traffic are published and known to everybody, that all interested understand the exact transportation cost, that the foundation of the act to regulate commerce is that all rates shall be published and observed, and that it is desirable if possible to apply this idea to the transportation of railroad fuel.

Some of the interveners represent that the cost of their fuel would be increased if the present rates are not continued. The Erie Railroad furnishes an estimate showing that the cost of its coal would be greatly increased if it were obliged to obtain its supply upon the old system of divisions. This point is of no importance because taken at its full value it is but a question of division between the carriers of the total sum paid by the public. If the consuming road pays more, the producing road receives more. And, aside from all this, as will be pointed out, there is a lawful and simple method available under which the same results can be attained for the consuming roads, for the producing roads, and for the coal operators as are now reached.

It is stated that the purpose has been to make these special railroad fuel rates approximate the divisions which would be received out of joint rates if actually observed. Presumably, the producing roads have not established rates which yield them much less than they would obtain under the other system and the consuming road would hardly consent to the payment of rates substantially greater than under the divisions of joint rates.

As a practical objection to the present system it is urged that it might open the door to fraud, that under these tariffs the coal is entitled to the railroad fuel rate only when actually consumed by the railroad, and that if coal transported under these rates was later put to commercial uses it would have borne a different and unlawfully discriminating rate from that borne by other commercial coal. This suggestion is not of great weight inasmuch as such deception if practiced could be exposed and would invite the penalties provided in the act. It is suggested that the present system of rates unjustly discriminates between different consumers. Ordinarily the railroad does not compete with a private consumer of coal but it may happen that the railroad is a manufacturer in competition with private enterprises and in that event its fuel so used would have borne a different rate from that used by the private factory.

It appears that these special fuel rates have been confined to coal used by steam railroads and this is stated to be an unjust discrimination against electric railroads which are rapidly coming into general use and into competition with the steam railroads. In some instances joint through rates and fares are in effect between steam and electric roads. It is difficult to see how unjust discrimination can be avoided if the coal-producing road gives a special fuel rate to another steam railroad and refuses to accord the same rate to an electric railroad that is in direct competition with the consuming steam railroad. The general impression presented in this proceeding seemed to be that no distinction could be made between steam railroad companies receiving coal from the same field at the same junction point, and that if any steam-railroad uses justified the special rates all steam-railroad uses might be embraced therein.

The objections from a practical standpoint to departing from the present system do not present any grave problems or any difficulties that can not easily be overcome. A carrier has an unquestioned right to haul its own property on its own rails at will. A joint rate between the producing road and the consuming road applying to a given point on the line of the consuming road, and out of which the producing road gets a division that is the same as its present special fuel rate, would yield the same results that are yielded by the present system. It is not an uncommon thing for carriers to file tariffs which show upon their face the divisions of the rates named therein, and if fuel coal were transported under a joint rate and the tariff showed the division of the rate there would be just as much publicity and general knowledge as to the charges of the producing road as there is under the special rate tariffs. The consuming road having hauled the coal to the point to which the joint rate applies can distribute it to its fuel stations via its own lines at will.

It is therefore apparent that as a practical matter there is no difficulty about bringing this system within the limits of the Commission's expressed opinions hereinbefore referred to. It is said that these special railroad fuel rates when published are subject to review by the Commission to the same extent as other rates, that if discrimination is found therein it can be removed and that if the rate is excessive it can be reduced. The same statement applies with equal force to a joint rate under agreed divisions whether such divisions are published or not. The Commission can always require the filing of the divisions, and a joint rate under agreed divisions definitely fixes the lawful earnings of the parties to that rate.

The more important question here, however, is whether or not the special tariffs in question are lawful and whether or not they violate any of the provisions of the act to regulate commerce.

In *Capital City Gas Co. v. C. Vt. Ry. Co.*, 11 I. C. C. Rep., 104, the Commission held that the maintenance of a rate on coal when intended for "railroad supply," and maintenance at the same time of a higher rate between the same points on coal used for other purposes, constituted unlawful discrimination; citing *Wight v. U. S.*, 167 U. S., 512, and *Interstate Commerce Commission v. A. M. R. R. Co.*, 168 U. S., 144.

In *In the Matter of Contracts of Express Companies for Free Transportation of their Men and Materials over Railroads*, 16 I. C. C. Rep., 246, the Commission held that a railroad company may lawfully transport men and supplies of an express company without reference to any tariffs when they are employed or used in the business of the express company upon the line of that railway, but that the railroad company may not lawfully transport men and supplies of the express company when they are employed or used in the business of the express company at points not on the line of that railroad. It was there said:

These contract provisions as applied to such off-the-line business are in violation of the statute because the carrier is transporting these men and supplies without the publication of a tariff *and at a rate different from that provided for the general public*. Any contract in effect even if valid when entered into must become invalid under the act to regulate commerce;

citing *I. C. C. v. C. & O. Ry. Co.*, 200 U. S., 361.

In *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.*, 16 I. C. C. Rep., 512, the Commission held that there was no warrant in the common law for the theory that a carrier as a shipper over the lines of another carrier may enjoy or be given a preferred status; that there is no intimation in the act to regulate commerce that a carrier as a shipper has or may be given a status different from or more advantageous than that given to all other shippers, and that

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the practice between carriers of according to each other preferential rates can not be upheld without removing the corner stone of the act which seeks to abolish undue preference and unjust discrimination. In this case it appeared that the defendant the Baltimore & Ohio Railroad Company had rates on coal from the Moundville district to Cleveland of \$1 per ton when for commercial purposes; 98 cents per ton when for vessel fuel; 88 cents per ton when for fuel cargo; and from Bellaire, Ohio, directly across the Ohio River from the Moundville district, 65 cents per ton when for railroad purposes. In that case the complaint came from a coal company, and it appeared that it was charged \$1.25 per ton on its shipments to Toledo, while coal from the same and other districts was carried to Toledo for 97.5 cents per ton for use of steam railroads.

Section 2 of the act prohibits receiving directly or indirectly by any device whatsoever a greater or less compensation for transportation for one person than for another person for "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." The courts have repeatedly held that the words "substantially similar circumstances and conditions" relate solely to questions of transportation or haulage. In *Wight v. U. S.*, 167 U. S., 512, where a railroad undertook to differentiate its service for two shippers upon the strength of differing conditions at the shippers' respective warehouses, the Supreme Court held that the circumstances and conditions referred to in section 2 of the act are those only which affect the transportation, and said:

It was the purpose of the section to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor.

In *Pennsylvania R. R. Co. v. International Coal Mining Co.*, 173 Fed., 1, the court affirmed the judgment of the lower court awarding damages because the plaintiff had been charged a higher rate on so-called "free coal" than others had been charged on so-called "contract coal." The court said:

The law having in view the carriage of freight and equal rates to all, it is clear to us that the words "substantially similar circumstances and conditions," as used in this subsection (section 2 of the act), are those which affect transportation, and not those which involve personal conditions or contractual relations between one particular shipper and the carrier, but are such things only as are circumstances of carriage generally. * * *

In this case the railroad charged to one shipper a rate of haulage, and the coal of the other shipper being hauled from the same initial locality to the same terminal point, the haulage was identical, and therefore the freight should be the same.

In *Mitchell Coal & Coke Co. v. P. R. R. Co.*, 181 Fed., 403, plaintiff was awarded judgment because of unlawful discrimination against
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it and in favor of other shippers, the discrimination being in allowances given to other shippers ostensibly for the use of their tracks. It was there held that the words "contemporaneous service" as used in section 2 of the act cover the time during which the discriminatory rates or practices remain in force. On this point the court said:

In my opinion the well-known evil aimed at in section 2 requires the court to hold that the implied term in the comparison is the offending rates, making the word to mean, "at the same time with the offending rates," and that, as long as these rates remain in force, the services rendered to a complaining and to a favored shipper are "contemporaneous" within the meaning of the statute.

It is suggested that these special fuel rates are analogous to export and import rates, and the *Pittsburg Plate Glass case*, 13 I. C. C. Rep., 87, and the *Import Rate case*, 162 U. S., 197, are cited in that connection. We are not prepared to admit that analogy, but even if it does exist the export and import rates are open and available alike for all shippers, while the rates here considered are restricted in their use to certain shippers or are conditioned upon the commodities being put to a certain use. In the *Import Rate case*, *supra*, the sole question was whether or not carriers subject to the jurisdiction of our act might charge less for transporting import traffic than on the same commodity transported between the same points when it was not imported. The *Pittsburg Plate Glass case*, *supra*, presented the same issue and was dismissed without prejudice on the strength of the decision of the Supreme Court in the *Import Rate case*, *supra*.

It is urged that the conditions under which this coal for railway fuel purposes is transported are different from those which surround the transportation of commercial coal. The distinction pointed out, however, goes only to the difference between hauling this railway fuel coal to the junction point and there turning it over to the connecting line, and hauling commercial coal to that same junction point and making delivery to commercial consignees. We have never held that the local rate to the junction point must be paid on shipments that are going beyond that point. What we have said is that the local rate to the junction point shall be the same for all shippers to that point, and that the through charge on shipments going beyond the junction point shall be alike for all shippers to the same destination. Defendants' witnesses testified that the service rendered on the fuel coal that goes beyond the junction point is the same as that rendered on the commercial shipments that go beyond the junction point. One intervener suggests that the average point of consumption may call for practically the same service.

There can be no substantial difference in the conditions of transportation of this railway-fuel coal from a point on the producing line

to a point on the consuming line as compared with the transportation of commercial coal between those same points. There may be slight differences in the terminal service required at destination, but that is true as to all shipments to any point of importance. It requires more and somewhat more expensive service to deliver one shipment than to deliver another, but that difference is not at all recognized in the rates, which are the same. The difference in transportation conditions must be substantial in order to remove the application of section 2 of the act. If a lower rate upon railway fuel coal is warranted because the railroad has facilities for receiving coal which make the cost of the service less, any shipper who provided like facilities must be entitled to the same rate accorded the railway. Obviously we should not permit a lower rate to a large shipper who has provided facilities for the prompt unloading of his traffic than is at the same time accorded to his smaller competitor who is not able to provide and who does not need such facilities. If that were done and it were finally held that it did not constitute violation of section 2 of the act, it would constitute clearly unjust discrimination in violation of section 3 of the act.

One intervening carrier finds justification for the special tariffs by saying: "Railroad fuel is consigned to a carrier having transportation facilities of its own. This element is lacking in commercial coal whether consigned to an industry or to an interurban company." It is a matter of common knowledge that interurban electric railways frequently haul materials and supplies for their own use and that in many instances they engage in hauling freight for shippers. It might easily be that a large shipper might have or provide himself with "transportation facilities of his own." Would that fact entitle him to special and preferential rates at the hands of carriers that are amenable to the act to regulate commerce?

This intervener also says: "Nor can the transportation service performed by an interurban electric line be treated similarly to that performed by a steam railroad because there is a well-defined distinction between a steam railroad and an interurban railroad (the latter usually being classed as a street railway) based upon the character of the service rendered, justifying a distinction between their respective corporate powers and duties." We can not concede that a carrier may base its charges for transportation upon a consideration of the respective corporate powers and duties of consignees.

Defendants say that electric roads should not be accorded the same rates as the steam roads because "they do not carry coal either as common carriers or otherwise." If there be a steam railroad and a competing electric railway from Toledo, Ohio, to Grand Rapids, Mich., and the one has a coaling station and the other a power house

at Jackson, Mich., and the Wheeling & Lake Erie Railroad provides in its tariffs that it will haul coal from Wheeling, W. Va., to Toledo for the steam railroad to use at Jackson at a certain rate, and that it will not accord the same rate to the electric railway, it thereby creates not only the unjust discrimination forbidden by section 2 of the act but also the undue and unreasonable preference that is forbidden by section 3 of the act.

It appears that about 5 per cent of the fuel coal is used at the junction points and to that extent the service is substantially the same as on local commercial coal to that junction point, although the rate is materially lower on the fuel coal.

It is argued that the railway fuel rate is in effect a proportional rate up to the junction point. It is not, however, tendered as a proportional rate applicable on business going beyond. A proportional rate like any other rate should be open to all shippers. These special tariffs offer transportation between named points in the same manner that transportation is offered to shippers under regular tariffs, the only difference being the restriction as to the consignees and as to the uses of the commodity.

Defendants say that "the naming of those consumers describes a kind of traffic, the naming of the consumer connoting a movement of the coal after the termination of the rate that completely differentiates the traffic." Again we ask, Is the shipper who is prepared to give his shipments further movement with his own facilities entitled to lower rates than the shipper who is not so prepared?

The case of *Worthington, Receiver of Wheeling & Lake Erie Railroad, v. R. R. Com. of Ohio*, cited by defendants, does not seem to have any real bearing here, as in that proceeding the question was whether or not the traffic was interstate. The special rate on lake cargo coal was cited as evidence of the interstate character of the traffic.

The decision of the Indiana commission in an inquiry similar to this one was made under a statute different from ours, and great weight was given to the interests of Indiana mines and citizens as compared with competitors in adjoining coal-producing states.

It is said that the consuming carriers furnish a large part of the equipment in which the fuel coal is loaded; that the producing carrier pays only the per diem charge on that equipment, and that this fact justifies the difference in the rates. Would it be held that the shipper who furnishes at a low rental cars in which to move his shipments may have special and preferential rates upon his shipments? Must not the carrier that accepts or arranges for the use of equipment not owned by it use that equipment in such way as to avoid unjust discrimination, just as it must use its own equipment in a nondiscriminatory way?

Obviously if a carrier as a shipper over the lines of another railway may be accorded preferential rates on its fuel the same rule must extend to all other supplies purchased and shipped by railroads. As an example of how this would probably work out we will assume a railroad at Chicago that desires to purchase for its own use a large quantity of lumber. It may secure that lumber from Oregon or Washington or from the yellow-pine fields of the south. The commercial rates on lumber from these widely separated and important fields to Chicago are adjusted with regard to competition between points of production, between carriers, and between markets. If the railroad is required to pay the same rate that any other shipper would pay it is not able to create any unjust discrimination. If, however, it may have special rates on its lumber because it is a railroad, it, like any other shipper, would use the fact that it had a large tonnage to move as a leverage with which to secure the most favorable rates possible. It would then become a question of arrangement between it and other railroads as to which would give it the most advantageous rate, and the bargain which it was so able to drive would determine whether it would buy the lumber in the northwest, in the southwest, or in the southeast. Its favored rates would create unjust discrimination between localities and between persons having lumber for sale.

There are few commodities that are not purchased and used directly or indirectly by railroads, and if a railroad were accorded special or favored rates as compared with other shippers discriminations such as that cited would be injected into almost every field of commerce and nearly every locality of production or manufacture.

The tariffs which contain rates applicable only to the shipments of certain consignees or when a commodity is put to a particular use and the rates which are so restricted to the use of certain shippers and not open to all shippers alike are in violation of section 2 of the act, and unjustly discriminatory in violation of section 3 of the act, and therefore unlawful.

An order will be entered requiring defendants and interveners to cease and desist from such violations of the statute.

PROUTY, Commissioner, dissenting:

I agree that the rate can not be varied according to the use to which an article is put; that a rate must be open to the whole public and can not be confined by its terms to an individual or a class; that a railroad can not be accorded a lower rate simply because it is a railroad; but I think that the movement of coal for railroad fuel supply so differs from the movement of coal for private use that a different system of rate making may properly be applied to its transportation.

My thought will be best understood by referring to the system which the Commission thinks should be observed, in comparison with

the system now in force, and which the defendant railways desire to continue.

All traffic must move under some published rate, and this applies to property owned by a railroad when moving over another railroad. Ordinarily, a railroad does not consume its coal at the junction point where it receives it from its connection, but hauls it to some other point upon its line, where it is taken from the cars for use upon its locomotives or for other consumption. If a private individual shipped coal from the mine to this consuming point, the rate charged would usually be a joint through rate materially less than the same rates up to the junction point plus the local rate of the consuming road to the point of consumption. Now, the Commission holds that a railroad may bill its coal to the consuming point at the rate which a private shipper would pay. Since the joint through rate is usually so divided between the producing road and the consuming road that the amount received out of it by the producing road is less than the local rate from the mine up to the junction point it results that by this process the consuming road obtains its freight for less than it would had the traffic been billed to the junction point and received by it at that point. Otherwise stated, the rate upon which this coal moves to the rails of the consuming road is the division of the producing road.

To this system, in practical operation, the defendants urge several objections:

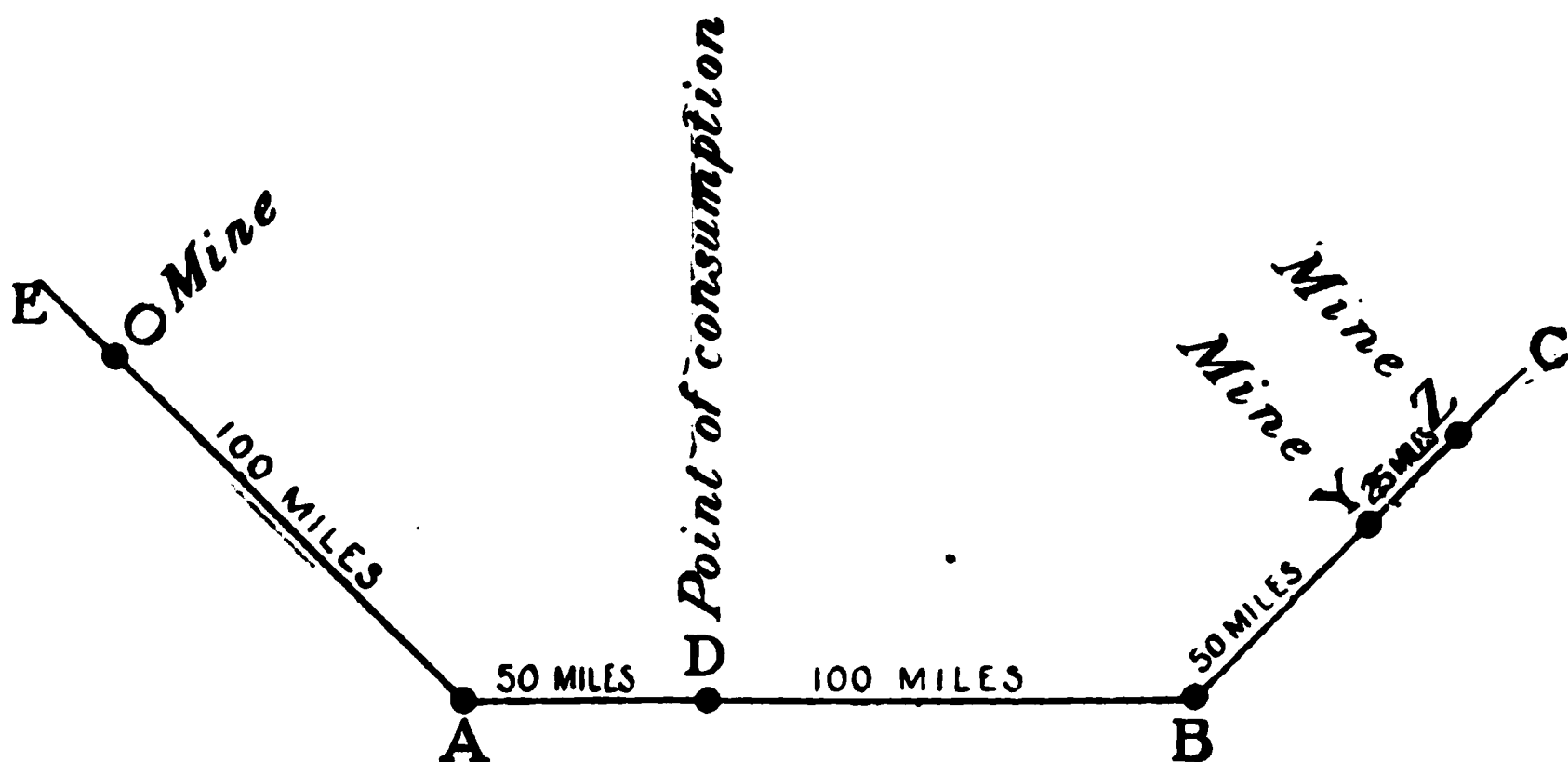
1. The railroad generally buys its fuel f. o. b. the mine. The rate which it pays from the mine to the junction point is the division of the joint rate. That division is a matter of contract between the two roads. It is not published and is not, therefore, necessarily known. It may be changed from day to day without notice to anyone. Coal operators who desire to sell for fuel supply complain that under this system they do not know, and can not know, what the rate is, nor whether that rate will be maintained, nor, if the rate is an unfair one, can they apply to this Commission for its correction. It is further urged that there frequently has been and that there always will be more or less manipulation in these divisions, with the result that certain mines or certain lines of railway will be preferred.

The answer of the Commission to this objection is that it may require from the carrier a statement of its division. We may undoubtedly require carriers to inform us of their divisions and to state from time to time any changes in those divisions, but the divisions themselves are not a part of the rate which carriers are required to publish. If they were published there is no requirement which will prevent their change at the will of the carrier. This Commission has no jurisdiction to fix these divisions except in case of a joint rate

established by it where the carriers have failed to agree between themselves upon the division.

It seems clear to me that under the system which the Commission says must be followed the actual rate upon which this traffic moves never can be known; that this rate may be changed from day to day, and that it is entirely beyond the power of the Commission to correct it, if wrong. All this follows, of necessity, from the fact that whatever the theory of the case may be, in actual practice the rate upon which this traffic moves is the division of the producing carrier up to the junction point.

2. Assuming that there were any method by which this division could be made public, by which its observance could be secured, and by which it could, if unjust, be corrected, there are still serious objections to that system, which will be best shown by reference to the following diagram:



AB is the consuming road and D the point of consumption. BC is the producing road. Y and Z are mines upon the extreme limits of a group. It is 100 miles from D to B, 50 miles from B to Y, and 25 miles from Y to Z.

As is almost universally the case with coal tariffs, there is a group rate from Y-Z to D, which in this case is \$2 per ton, and this rate is divided between the railroads AB and BC upon a mileage basis. Upon each ton of coal originating at Y, AB would receive \$1.33 $\frac{1}{3}$ and BC 66 $\frac{2}{3}$ cents, while upon a ton of coal originating at Z, AB would receive \$1.14 $\frac{2}{3}$ and BC 85 $\frac{1}{3}$ cents. If, therefore, AB buys its fuel coal of the mine Y it pays for its transportation to B 66 $\frac{2}{3}$ cents per ton, while if it buys its fuel coal at Z it pays for its transportation to B 85 $\frac{1}{3}$ cents per ton. Consequently, AB obtains its coal 19 cents per ton cheaper if it pays the same price to the mine at Y as it pays at Z. Since this is a very handsome profit in the mining of coal it is evident that Z can not compete with Y for the fuel supply of AB.

Now, what these carriers desire to do is to make a group rate from Y to Z, somewhat greater than 66 $\frac{2}{3}$ cents, and somewhat less than 85 $\frac{1}{2}$ cents, which will put the entire group upon the same competitive basis with respect to the fuel supply of the road AB which that group occupies with respect to private consumption at point D.

If, now, we add another producing railroad, AE, and consider shipments from mine O as compared with shipments from mine Y, we have another situation. The distance from D to A is 50 miles and from A to O 100 miles. From O to D the distance is therefore the same as from Y to D, and the rate from these two mines to D for private consumption is also the same. Out of a rate of \$1.50 per ton the road AB obtains \$1 when the coal originates at Y and 50 cents when it originates at O; that is, if it purchases its fuel at Y it would pay 50 cents per ton for delivery upon its rails, while if it purchased at O it must pay \$1 for that service. While AB will pay something more for its coal at A than at B, since its own haul from B is somewhat greater, still there would be nothing like the difference expressed in the difference of these divisions, and what the railroads desire in this case is to make such a rate from O to A, in comparison with the rate from Y to B, as will give the mine O the same opportunity to compete for the fuel supply of AB which they enjoy in competing for private supply at point D.

The figures above given are extreme, but the situation illustrated runs all through these coal regions and is of vast importance. Some producing coal roads handle nearly or quite one-half the entire output of their mines for railroad fuel supply. In case of many mines more than one-half the output goes to that purpose, and whether a mine shall exist is often determined by whether it can furnish railroad fuel.

The system which the railroads now have in effect was first established at the request of the operators, but is now approved by all parties concerned, the operators, the producing road, and the consuming road. It is universally recognized that in no other way can the actual rate of transportation be known. In no other way can its maintenance be assured, and in no other way could it, if wrong, be corrected by public authority.

The purpose of the act to regulate commerce is to facilitate, not to impede, commercial operations. When shippers and railways unite in asking that a particular thing be done; when that thing is manifestly for the interest and convenience of all parties; when no harm can result, but when, upon the contrary, the fundamental purposes of the act will be promoted, I think we should, if possible, put such a construction upon this statute as will permit it.

It does not seem to be seriously claimed by the majority that the present method of publishing these fuel-supply rates is attended with

any practical wrong, but it is said that the second section of the act peremptorily forbids it and that it is therefore unlawful and must be so declared by us.

The second section provides that where the service is like and contemporaneous, the traffic of a like kind, and the circumstances and conditions under which the transportation occurs substantially similar, the rate shall be the same. The majority hold that a railroad stands like any other shipper and that to accord one rate when the shipment is for a railroad and another rate when it is for a private individual is to violate that section. I concede this to be so if the only difference in the transaction be that the freight money is in one case paid by a railroad company and in the other case by a private party, but I think that there are other incidents of the transaction arising out of the circumstance that this fuel is for railroad supply and is received at the junction point by a railroad, which excepts the case from the operation of the second section.

To understand just what is meant, look at the diagram above given. The rate now published from Y to B when the coal is for railroad-fuel supply is less than the rate for a private shipment delivered at B. Now, it is urged that since the transportation between these points may be at the same time and in the same train it is prohibited by the second section to charge one rate for the car of private coal and a different rate for the car of public coal.

It is said that the Supreme Court of the United States in the *Wight case*, 167 U. S., 512, held that the words "circumstances and conditions," as used in the second section of the act, refer exclusively to the service of transportation and that in order to make out a dissimilarity of circumstance and condition under that section it is necessary to show a different transportation service. I am not prepared to admit that such is the fair interpretation of that case as applied to a set of facts like those now before us; but assuming that it is, nevertheless it seems to me that upon the strict rule of that case as so construed the circumstances and conditions attending the transportation of this fuel coal substantially differ from those under which private coal is handled.

The transportation of the private coal from Y to B involves a delivery at B. To effect this, tracks must be provided upon which that delivery can be made, and the shipper must be given a certain length of time, usually 48 hours and sometimes more, in which to unload his coal. Upon the other hand, delivery of fuel coal is made upon the exchange track of the common carrier for whom the coal is intended, and no use of the car is involved, since as soon as the car is placed upon the exchange track at the service of the connecting carrier, that carrier accounts for the use of the car to its owner and

relieves the railroad handling the coal from Y from that burden. It is perfectly evident, therefore, that the carriage and delivery of the fuel coal costs the producing carrier less than that of the private coal. Here, therefore, is a difference in circumstance and condition which takes the case from the operation of the second section.

It is suggested that the comparison ought to be between the transportation from the mine to the point upon the consuming road where the coal is finally consumed. If this were so the delivery to a private individual is not analogous to that taken by the railroad company itself at the point of consumption, but, certainly, it can not be true that the consuming railroad must handle this traffic upon its own line under a published tariff. It may receive it at the junction point and subsequently transport it over its own rails without reference to any tariff rate.

It is said that if this be so, then carriers might make a lower rate in favor of any shipper who would provide tracks and other facilities for the speedy unloading of the coal, and that the effect of such rates would be to throw the handling of coal into the hands of large operators who could provide such facilities. Our second section is essentially a reenactment of the English equality clause, and if our court follows in the interpretation of that section, the lead of the English court in its treatment of the equality clause, it must hold that where the cost of transportation and delivery is less a difference in rate is not forbidden. This is well shown by reference to *Denaby Main Colliery Co. v. M. S. & L. Ry. Co.*, 11 App. Cases, 97.

The defendant railway company was engaged in transporting coal from the South Yorkshire field to the port of Grimsby. At that destination team tracks had been provided by the defendant for the delivery of its coal, and the complainant colliery company took delivery of its shipments upon these team tracks.

Bannister, a competitor of the complainant, had provided at Grimsby, yards with tracks and various facilities for the unloading of coal, and it was found that the cost to the defendant of delivering coal into the yards of Bannister was less than the cost of delivering upon its team tracks to the complainant. Under these circumstances the court held that the equality clause of the English act did not apply, but that since the cost of the service to the defendant was less in the case of Bannister than in the case of the complainant, a lower rate might properly be made to him.

If our court holds, as it apparently has indicated in the *Wight case*, that difference of circumstances and conditions may be shown by showing difference in cost of service, it is difficult to see how it can avoid the conclusion that, when the cost of service for any reason is less in transporting the freight of one person than in transporting

that of another, the second section does not apply. It should be borne in mind that the third section may prevent the making of the lower rate, even though it be lawful under the second. The prohibition of the second section is absolute within the sphere of its operation. If the service is like and contemporaneous, the kind of traffic like, and the circumstances and conditions of the transportation the same, then the rate must also be the same. The third section is more elastic. It forbids *undue* discrimination or advantage, and it is for us to say, upon a consideration of all the facts, whether that section has been violated.

It seems to me, therefore, that the circumstances and conditions attending the transportation and delivery of this fuel coal are different from those under which private coal is handled, and that for this reason the second section does not forbid the making of different rates for the different services, and if this be so then the second section has no application whatever. I think, however, that there is a broader and more fundamental ground upon which the operation of that section can be distinguished. This fuel coal is not, to my mind, a like kind of traffic with private coal nor is its carriage a like service within the meaning of that section. Even though the physical service performed be exactly the same it is not a violation of the second section, upon the part of the carrier, to demand and receive a different compensation for that service.

If we were to follow the history of a dozen cars of coal taken on at the same mine, moving in the same train and delivered at B upon the same track to its connection, we might find that the carrier received a different rate for every car. It is true that this difference in compensation might be due to the fact that the traffic was intended for different points and that the division of the carrier differed according to the destination of the shipment; but it is also true that carriers habitually make what are known as proportional rates up to the junction point which are less than the local rate. Traffic handled upon through rates or upon proportional rates is not a like kind of traffic with that which begins at the mine and ends at the junction point, nor is the service a like service, and even though the cost of the transportation is precisely the same, the carrier may impose a different charge.

The fact that this fuel coal is to be consumed at some point beyond the junction; that from the junction point it is carried by the railroad which is to consume it, and which is or may be entitled to a division of the through rate to the point of consumption, gives this business traffic incidents which do not attach to ordinary private coal. It is this fact which renders it impossible to know the rate upon which the fuel coal is handled; to compel a publication and

maintenance of that rate; or to control the rate by Government authority. This business is closely analogous to export and import traffic.

It is well understood that the rate applied on certain commodities when for export is lower to nearly if not all ports of export in the United States and Canada than when for domestic consumption. It may be true that in most instances the physical incidents of the transportation are somewhat different in the case of the export than of the domestic business, but this is not the broad ground upon which the lower rate is justified. It is because the carriers in the treatment of this export traffic may consider the point of origin, the point of final destination, the possibility of transporting this traffic by different avenues, the fact that the commodities transported must compete abroad with similar commodities produced in other countries which justifies the lower export rate. If it should turn out in some individual case that the cost of handling business was exactly the same, whether for export or for home consumption, still the export rate would undoubtedly be sustained. To deny carriers the right of maintaining lower export tariffs than apply to domestic business would shut up two-thirds of the ports of export in the United States.

Exactly the same thing is true, and for exactly the same reason, of imports. This business may move from the port to the interior destination in the same train and for precisely the same expense as domestic traffic, but it need not for that reason bear the same rate. It is not a like service. This is well pointed out in the *Pittsburg Plate Glass case*, 13 I. C. C. Rep., 87, in which the Commission said:

Transportation from a seaport of the United States or an adjacent foreign country to an interior American destination in completion of a through movement of freight from a port of a foreign but not adjacent country, whether upon a joint through rate or upon a separately established or proportional inland rate applicable only to imports moving through, is not a "like service" to that of the transportation independent and complete within itself of traffic starting at such domestic port, though bound for the same destination.

It is true the court held in the case of *Wight v. United States*, 167 U. S., 512, that the existence of competition did not create "dissimilar circumstances and conditions" such as to justify discrimination as defined in the second section. But this referred to unjust discrimination as between different shippers over the same line in the performance of a "like service," and, as we have seen, the transportation of import traffic from the port of entry to an interior destination in completion of a through movement from a point in a foreign country is not a like service to that involved in the transportation of domestic traffic originating at such port, even where the transportation in all other respects is performed under like conditions.

It follows that the charge of unjust discrimination in violation of section 2 of the act is not sustained.

The lower import rate has been expressly approved by the Supreme Court of the United States in the *Import Rate case*, 162 U. S., 197.

In that case the traffic originated at Liverpool and was intended for San Francisco. It moved to New Orleans by water and from New Orleans to San Francisco by rail. The amount received by the rail carrier was materially less than the rate for the transportation of exactly the same articles from New Orleans to San Francisco, but the court held that this was not prohibited by the act to regulate commerce. The court must have held in that case that the import traffic was not a like kind of traffic with that originating at the port of import.

So here it seems to me that when all the circumstances which surround this fuel-coal traffic are considered it is not a like kind of traffic, under the second section, with coal transported for private consumption, nor is the service a like service, and while there may be to-day grave doubt as to the final decision, my belief is that the Supreme Court should and will finally so hold. I can see no other theory upon which rates which are vital to the handling of the business of this country can be justified.

The second section is directed against discrimination between shippers. To charge one person one rate and another person another rate for the performance of exactly the same service is a wrong which that section was intended to prevent. But there is no wrong when the private consumer who receives his coal at B is charged a different rate for the transportation from Y than is imposed for carrying railroad coal from Y to B and there delivering it to the connecting railroad for use at various points upon its line. The wrong does not exist because the service is not the same, and since there is no wrong the statute ought not to be so construed as to impose a penalty.

It is suggested that if railroads be allowed to make special rates for the transportation of coal when for railroad use the same privilege must be extended as to other railroad supplies; and this is probably true, although the convenience of the railways in seeking to avoid a multiplicity of tariffs, and perhaps the discretion of this Commission, might to some extent limit the exercise of that privilege. I for one think it would be much better if all the principal railway supplies did move upon tariffs of this character.

In my opinion the method now in vogue leads to much evasion and discrimination. Our last annual report makes reference to two cases—*United States v. M. & W. R. R. Co.* and *United States v. L. S. & M. S. Ry. Co.*—in which fines were assessed for discrimination in the transportation of company material. In the first case the material was billed to that point where the best service was to be had and stopped off at an intermediate point. In the second case two instances were detected and punished, and many hundreds of instances which escaped observation.

An examination of our correspondence files will show that trouble is constantly arising from the fact that the railroad bases the price for its supplies upon the division which it expects to obtain from the point of origin to the junction point instead of upon the local rate up to that point. It is evident that carriers select for the billing point not that station at which the traffic is to be actually used but that at which the most favorable division can be obtained. To my mind it would be better on all accounts if carriers were required to publish a rate up to the junction point upon all railway supplies which move in very considerable quantities. Such a rate would be known to every one, would be paid by all alike, and could be corrected if discriminatory or unjust.

It is pointed out that these tariffs do not apply to fuel for the use of electric railroads, but only for steam railroads. The kind of motive power used can not, it seems to me, distinguish between different railroads in this particular, but this is not a reason for refusing to permit the publication of these rates. When attention is called to an actual discrimination of this kind, resulting from one of these tariffs, it can be and should be corrected.

20 I. C. C. Rep.

No. 2977.

H. ROSENBLATT & SONS

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted January 30, 1911. Decided March 11, 1911.

1. The fabric known to the trade as "triplex cloth," frequently made up of woolen or silk materials, but consisting in this instance of a layer of cotton goods and a cotton shoddy lining with an intermediate layer of reclaimed rubber, is not cotton piece goods and therefore is not entitled to the cotton-piece-goods rate. Generally speaking it may properly take the rate applied to dry goods n. o. s.
2. The through rate charged on a shipment of triplex cloth from Fort Wayne, Ind., to Beloit, Wis., exceeded the sum of the intermediate rates and is therefore unreasonable. Reparation awarded.

G. M. Stephen and *S. J. Bolton* for complainants.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

Loesch, Scofield & Loesch and *Theodore Schmidt* for Pennsylvania Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

This matter was formerly before us in a proceeding under the same title, reported in 18 I. C. C. Rep., at p. 261. It there appeared that the complainants were demanding reparation on a shipment to them on October 30, 1909, of 34 bales of triplex cloth of the aggregate weight of 22,000 pounds, from Fort Wayne, in the state of Indiana, to Beloit, in the state of Wisconsin. The goods were described in the bill of lading, made out by the consignor, as "cotton piece goods," and the charges were accordingly assessed by the defendants, and paid by the complainants, at the through class rate of 55 cents per 100 pounds. In our report attention was called to the fact that the legal rate was the through first class rate of 76 cents per 100 pounds applicable under the Official Classification 20 I. C. C. Rep.

on dry goods n. o. s., and we reserved the question of the reasonableness of that rate on triplex cloth until the complainants should have paid the charges then lawfully in effect.

The matter comes on again upon a supplemental petition by the complainants in which, after setting up the subsequent payment by them of the undercharge, they challenge the reasonableness of the 76-cent rate in its application to triplex cloth, and allege that it is unreasonable to the extent that it exceeds the combination of the intermediate rates on cotton piece goods. Reparation is asked in the sum of \$88.

The complainants rest their case on the original record. The defendants, on the other hand, offered further testimony to show that there is no practical way, from a transportation standpoint, of satisfactorily distinguishing in the tariffs between the different kinds and qualities of triplex cloth, which vary in value from 10 and 12 cents to \$3 and \$4 a pound. Under the Official Classification all dry goods are rated under the first class, with the single exception of cotton piece goods, which phrase is understood to embrace cotton fabrics in the original bolt or piece as manufactured at the mills. Triplex cloth, on the other hand, is frequently made up of woolen or silk materials, or partly of wool and partly of cotton. These particular shipments apparently consisted of a fabric made up of a layer of cotton goods and a layer of cotton shoddy lining, held firmly together by means of an intermediate layer of reclaimed rubber. This indicates that it was a cheap and inferior quality of triplex cloth, and probably of no greater value than ordinary cotton piece goods. But, as stated, triplex cloth of much greater value is manufactured and is in more or less general use. We are fully aware that some tariffs which name commodity rates on cotton piece goods also specifically apply those rates to triplex cloth. This is probably due to local conditions. But we do not find in the record a sufficient basis for reaching the conclusion that such material ought to take the same rate as applies on cotton piece goods. On the contrary, we are of the opinion that triplex cloth, generally speaking, may properly take the rate applied to other dry goods.

It appears, however, that the first class rate from Fort Wayne to Chicago is, and was at the date of the movement, 28.5 cents; and the first class rate from Chicago to Beloit is and was 36.66 cents per 100 pounds. The combination of intermediate class rates on Chicago, therefore, is 65.16 cents per 100 pounds, which is less than the joint through rate of 76 cents exacted from the complainants. Following the usual rule we therefore find that the charges on the shipment in question were unreasonable to the extent that they exceeded the sum of the intermediate rates, namely, 65.16 cents per 100 pounds; and

that the complainants are entitled to reparation in the sum of \$23.85, being the difference between the charge of \$167.20 actually paid and the charges assessable at the rate we here find reasonable. The order will include interest from May 1, 1910. The defendants will be required also to establish and maintain a through rate not higher than the combination of intermediate rates into and out of Chicago.

We again suggest that the through class rates of the defendants in this general territory apparently stand in need of some revision, for the reason that in many instances they apparently exceed the Chicago combination.

An order will be entered in accordance with these findings.

20 I. C. C. Rep.

Nos. 698 and 707 (Sub-No. 1).
KAUL LUMBER COMPANY
v.
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted December 15, 1910. Decided January 13, 1911.

A lumber company doing business in Alabama had a railroad which was constructed under its general incorporation and connected its mill, on the line of the Central of Georgia Railway, with its timber. In 1901 the lumber company made a contract with the Central of Georgia under which it received a division of 2 cents per 100 pounds of all rates on lumber shipped by it from its mill, which 2 cents was supposed to represent the portion of the through rate to which the lumber company was entitled for the haul from the timber to the mill, through rates being made from the timber, called "Wildwood," to various destinations. Between June 22, 1903, and February 4, 1908, the rates on yellow-pine lumber from the points of origin in Alabama to the Ohio River and related points were advanced 2 cents per 100 pounds. In the *Central Yellow Pine* and *Tift cases*, 10 I. C. C. Rep., pages 505 and 548, the Commission condemned similar advances from competing and contiguous territory. Upon a complaint charging the unreasonableness of the 2-cent advance and asking reparation based thereon, *Held*:

1. That, without deciding whether this railroad, owned and operated by the lumber company, is a common carrier or not, upon the facts appearing in its operations in hauling company material for the Kaul Lumber Company it can be considered by this Commission only as a plant facility.
2. That, conceding for the purposes of this case that the advance of 2 cents per 100 pounds on yellow-pine lumber was unreasonable and unjust, the complainant lumber company is not entitled to any reparation thereon for the reason that it has never paid the advance.
3. That, if the railroad of the lumber company should be held to be a common carrier, as the complainant contends it should, in such case it can not be heard to complain of the advance in rates because it had concurred tacitly and explicitly in such advance.

Wimbish & Ellis and *Edgar Watkins* for complainant.
Lawton & Cunningham for Central of Georgia Railway Company.
M. P. Callaway and *C. B. Northrup* for Southern Railway Company.
Albert S. Brandeis and *Nelson W. Proctor* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Chairman*:

This complaint challenges the reasonableness of an advance of 2 cents per 100 pounds in the rates on yellow-pine lumber effective June 22, 1903, to February 4, 1908, from certain points in Alabama to and beyond the Ohio River, as well as to certain portions of Kentucky and Tennessee south of the River. Reparation is demanded in a sum approximating \$50,000.

The complainant is engaged in the production, manufacture, and distribution of lumber. Its mill is at Hollins, Ala., on the line of the Central of Georgia Railway, 62 miles southeast of Birmingham and 9 miles southeast of Sylacauga, where that road crosses the line of the Louisville & Nashville Railroad. The timber supplying this mill is a large tract in Coosa county lying south of the line of the Central of Georgia Railway and reached by a railroad owned and operated by the complainant extending from Overbrook, formerly Kaup's switch, on the line of the Central of Georgia 5 miles west of Hollins. This road is known as the Sylacauga & Wetumpka Railroad, but it is not separately incorporated, the laws of the state of Alabama giving the Kaul Lumber Company the right to build and operate a railroad and making such road a common carrier when built.

In the *Central Yellow Pine* and *Tift cases*, 10 I. C. C. Rep., pages 505 and 548, the advance of 2 cents per 100 pounds in rates on yellow-pine lumber from certain producing sections of the south to the Ohio River made concurrently with that here involved was condemned. The points of origin named in the present case are in that portion of the southern territory not embraced in the two reports cited, which may briefly be described as all that section of southeastern territory west of the Alabama-Georgia state line and south and east of an irregular line drawn from Chattanooga through Birmingham and Montgomery to Pensacola.

As we view the matters here presented, it is not necessary to go into a detailed discussion of the advanced rates which were in effect in the territory in question from June 22, 1903, to February 4, 1908. The United States circuit court, which by injunction enforced the orders of the Commission condemning the advance in the cases above cited, also enjoined the collection of the 2-cent advance here in question, so that it has not been in force since February 4, 1908. The defendants made only a technical defense of the reasonableness of the advance in rates, and in view of all the circumstances and conditions affecting the case now before us, as well as in view of the relative adjustments of rates from territories contiguous to and competing with the territory now involved, we may assume for the purposes of this case that the advance in rates in question was un-

reasonable and unjust in so far as it actually applied from Hollins and points grouped therewith or having rate or group-rate relations thereto, and that the advance here involved was unreasonable on the same grounds as those upon which the like and simultaneous advance from adjacent territory was condemned. The sole question, therefore, for present determination is the right of complainant to reparation on account of shipments made during the period stated when the advance was in force.

In the autumn of 1901 the Kaul Lumber Company, then known as the Sample Lumber Company, found that the supply of timber adjacent to its mills at Hollins, Ala., on the line of Central of Georgia Railway, was exhausted. Another tract of timber containing 35,000 acres was purchased in Coosa county, within the angle made by the crossing of the lines of the Central of Georgia and the Louisville & Nashville at Sylacauga; but this timber was not immediately adjacent to either railroad. The situation was as follows: Complainant's mills at Hollins could be supplied with logs from the forest only by building a railroad for their transportation, in which event the Central of Georgia would retain the initial haul as theretofore; or the lumber company might remove its plant to some point on the line of the Louisville & Nashville and build a tap line thence to the timber. The decision of the lumber company turned upon the question as to which carrier would offer the more advantageous terms with respect to transportation. Early in November, 1901, the lumber company entered into a contract with the Central of Georgia, the details of which are as follows:

The Central of Georgia Railway Company covenanted:

1. To furnish all of the material to build the railroad from Kaup's switch (afterwards called Overbrook), to the property line of the lumber company, a distance of about 5 miles.
2. To construct the necessary sidetrack as Kaup's switch and to shift and handle cars between the Central of Georgia Railway and the Lumber Railroad.
3. To furnish free the cars to haul the logs to the mill of the lumber company.
4. To handle the cars so furnished from Kaup's switch to the mill at Hollins free of cost.
5. To allow the lumber company 2 cents per 100 pounds on all lumber, laths, and shingles "manufactured by the said lumber company at Hollins, and shipped therefrom, or hauled by the lumber company to Kaup's switch, and there delivered to the Central of Georgia, and this amount of 2 cents per 100 pounds is fixed without regard to the terminal point to which said material shall be shipped."
6. The rate on lumber, laths, and shingles, shipped by the lumber company not to be greater than the rate on the same material from Sylacauga.
7. To carry the lumber company's supplies free of charge from Hollins to Kaup's switch.
8. To permit the lumber company to maintain a wire on the poles of the Central of Georgia on its right of way between Hollins and Kaup's switch.
9. To transport free the logging engine, and log loader of the lumber company between Kaup's switch and Hollins whenever in need of repairs.

The covenants on the part of the lumber company were:

1. To build and maintain a track, and furnish the right of way for the railroad, into the timber lands of the lumber company.
2. To ship over the lines of the Central of Georgia all of the lumber, laths, and shingles manufactured by the lumber company at Hollins and hauled by it over the line of the railroad to be built under the contract.

The only modification in the contract above set forth has been that the Central of Georgia does not now actually handle the cars from Kaup's switch to the mill at Hollins, but furnishes an engine which is manned by the lumber company and used by it to haul the cars between Kaup's switch and the mill at Hollins.

This contract will not expire until January 1, 1917, unless sooner abrogated by consent of both parties, and under it the complainant had received from the Central of Georgia Railway Company about \$146,000 up to the summer of 1908. How much more has been received by it since that time the record does not disclose, but the fact is clear that the payments still continue.

Complainant, while admitting that the Sylacauga & Wetumpka Railroad has no separate corporate existence, insists that it is a common carrier and as such is entitled to participate in the establishment and division of through rates and that the allowances to it under this contract were and are legitimate divisions. With the consent and authorization of the Kaul Lumber Company, the Central of Georgia, both before and subsequent to said advance in rates, filed so-called joint rates showing the Sylacauga & Wetumpka, formerly the Hollins, Hefflin & Sylacauga Railroad, as a participating party thereto.

From 1901 until May 19, 1905, the rates from Hollins and from Wildwood were the same. Wildwood was and is the ostensible billing station on the Sylacauga & Wetumpka for all lumber cut in the forest by the Kaul Lumber Company, milled at Hollins and transported over the rails of the Central of Georgia. Wildwood, however, is a movable name for the lumber camp; it was in one place yesterday, is in another to-day, and will be farther in the woods to-morrow; as a name it is truly descriptive and means the extreme end of the Sylacauga & Wetumpka as it is extended into the woods from time to time to reach the logs. On May 19, 1905, while the advanced rates now the subject of complaint were in effect, the rates from Wildwood and from all stations on the Sylacauga & Wetumpka were made 3 cents higher than from Hollins. We need not consider the purpose of this increase in rates but merely note in passing that the 3 cents advance inured to the benefit of the Sylacauga & Wetumpka alone, and that its divisions on all traffic became at once 3 cents, under the tariff, plus 2 cents under the contract, or a total of 5 cents. With respect to its own traffic this was a mere matter of bookkeeping,

but there were at that time independent operators shipping forest products on its line. On March 19, 1907, the published rate from Wildwood was reduced to 2 cents higher than from Hollins, but no reduction was made in the rate from the intermediate stations. May 20, 1909, the Wildwood rate was made the same as that from Hollins, but the other stations on the Sylacauga & Wetumpka Railroad still carry the extra burden of 3 cents per 100 pounds over the Hollins rate. The testimony indicates that such competition as formerly existed with the Kaul Lumber Company along the line of the Sylacauga & Wetumpka has shrunk to inconsiderable proportions.

This is not an application by one carrier for the apportionment or division of a joint rate, for the lumber company and the Central of Georgia Railway Company have agreed as to the division, not only once but repeatedly; but the complaint before us is for reparation because of an unreasonable rate. All the lumber of complainant was delivered to the Central of Georgia at Hollins under the waybills of the Sylacauga & Wetumpka Railroad from "Wildwood." As so billed the rate assessed on the shipments was the same as the Hollins rate, or 3 cents or 2 cents higher, as above shown; for the transportation of lumber billed from "Wildwood" to any point the Central of Georgia received in every instance exactly 2 cents less than the published rates from Hollins, for the Kaul Lumber Company retained the extra 3 cents or 2 cents for the haul over its own line, the Sylacauga & Wetumpka, and received in addition thereto 2 cents out of the through rate without regard to the destination of the shipment. There is no allegation that any of the rates from the territory in question were unreasonable except in and to the extent of said advance of 2 cents while in effect between the dates named. Disregarding the form and looking to the substance of the rates, it is clear that whoever else may have paid such unreasonable and excessive rates the Kaul Lumber Company did not. If, on the other hand, we could disregard the substance and look only to the form of the transaction we would find it difficult to enter an award of damages to complainant on account of rates in the establishment and division of which it was a party.

The contention made by the complainant that its road, the Sylacauga & Wetumpka Railroad, was, and is, a common carrier is supported by the laws of the state of Alabama, and by the filing of tariffs and concurrences in tariffs with this Commission. There may be other things in the record making either for or against the contention that this road is a common carrier, but we do not consider that it is necessary at this time for us to pass upon the question.

Under the laws of the state of Alabama the Kaul Lumber Company, in constructing its railroad, was given the ordinary rights of a

common carrier and the burdens pertaining to such a carrier were imposed upon it with respect to its road. The Sylacauga & Wetumpka Railroad has concurred in certain tariffs filed with this Commission, and to that extent it may have put itself in position to be held accountable under the federal law and to independent shippers on its line. We believe that all the demands of substantial justice and the true right of the matter compel us to hold that whereas it may be a common carrier with respect to the public at large, in the transportation of logs and other forest products from the forest to the complainant's mill, the services of the Sylacauga & Wetumpka Railroad in the transportation from the forest to complainant's mill of these products, which is the basis of this claim, was a plant-facility service for the complaining company.

We find no basis in the facts of this case for an award of reparation, and the case, therefore, will be dismissed.

PROUTY, *Commissioner*, concurring:

I concur in the disposition of this case, but not in the ground upon which it is put.

The opinion states that whether the Sylacauga & Wetumpka Railroad may or may not be a common carrier is immaterial. To this I do not agree, since if it be a common carrier it should not, in my opinion, be regarded as a plant facility of the Kaul Lumber Company.

Whether a railroad in a particular case should be treated as a plant facility may depend:

1. Upon the character of the service which it performs. In the *General Electric case*, 14 I. C. C. Rep., 237, the *Solvay Process case*, 14 I. C. C. Rep., 246, and the *Crane Iron Works case*, 17 I. C. C. Rep., 514, this was the controlling consideration. While it may be difficult to draw the exact line of demarcation between the spotting of cars upon the private switch of an industry and the moving of cars from point to point within the territory covered by a great industrial plant, still the Commission has said in the above cases, and correctly as it seems to me, that the distinction does exist.

Now, in the case before us the thing done is properly the function of a common carrier and not necessarily of a plant facility. Great quantities of logs are transported to mills for manufacture by railroads as common carriers under published tariffs.

2. A railroad may be a plant facility because it serves only a particular industry. Had this railroad been exclusively engaged in the transportation of logs from the forest to the mill of the lumber company, or had that been so nearly its exclusive business that it could not be properly regarded as a common carrier, then it would be a part of the plant of the Kaul Lumber Company, and therefore a plant facility.

20 I. C. C. Rep.

When, however, it ceases to be a private adjunct of this industry and becomes a servant of the public, subject to public regulation, operated under public supervision, it is no longer a mere appendage of this mill but a public institution. Under these circumstances it is not a plant facility with respect to those operations which are properly the function of a common carrier.

And the application of this rule can create no unjust discrimination between the Kaul Lumber Company and any other lumber company, so long as the division allowed that railroad for the performance of this service by its connection is not undue. The case shows that mills were located upon the Sylacauga & Wetumpka Railroad, whose product was carried by that railroad to market. Compare one of these mills with the mill of the lumber company. The Kaul Company performs the service in each case, and in each case it receives for that service 2 cents per 100 pounds. In each case the cost of performing the service plus a reasonable profit is 2 cents per 100 pounds. The Kaul Lumber Company therefore receives from the railroad company 2 cents per 100 pounds which its rival does not, and pays out exactly that sum in the performance of a service which its rival does not perform. There is therefore no advantage in favor of either.

If, upon the other hand, the Kaul Lumber Company were denied a division upon the transportation of its own product, it would be at a disadvantage, since it would pay the same rate as its competitor while to secure that rate it would be obliged to expend 2 cents per 100 pounds while its competitor expended nothing.

I do not think that the Kaul Lumber Company is estopped from attacking this through rate as unreasonable by the fact that the Sylacauga & Wetumpka Railroad concurred in the tariff.

The law of Alabama permitted this company to construct a railroad, which, when constructed and in operation, was a common carrier and subject to all the obligations of a common carrier to the general public. Neither that railroad nor the Kaul Lumber Company had any voice in this 2-cent advance; nor did it derive any benefit from that advance. I can not believe that it was the duty of that railroad, under the circumstances, to decline to join in that tariff and thereby to deprive these other mills which were located upon its line of the benefits of a through rate and of that through service which, under the statute, it was bound to accord to them as shippers. It was the duty of that railroad to join in these tariffs under the circumstances, and it was the right of every shipper upon its line, including the Kaul Lumber Company, to attack the rate so established as unreasonable. This railroad has become a public servant and in so far as it performs a public service it stands related to the Kaul Lumber Company as it does to every other shipper.

It appears that there were certain other mills located upon the Sylacauga & Wetumpka Railroad at which forest products were manufactured in competition with the Kaul Lumber Company. After the 2-cent advance by the main-line roads the rate was still further advanced by 3 cents per 100 pounds from all points upon the Sylacauga & Wetumpka Railroad. This advance was made at the request of that company, and the entire amount of that advance was retained by that company. After the advance the Sylacauga & Wetumpka Railroad received from its main-line connections, not 2 cents, but 5 cents per 100 pounds by way of a division.

The manifest purpose of this action upon the part of the Kaul Lumber Company was to secure an advantage of 3 cents per 100 pounds as against its competitors who were operating upon its railroad, and such was the manifest result of the transaction. Assuming, as we must, that 2 cents per 100 pounds was a just and reasonable division between this railroad and its connections, the transaction above stated was not only technically unlawful but disreputable in fact, and both the Sylacauga & Wetumpka Railroad and the main line railroad ought to be responsible to the industries affected. It is because situations of this kind should be effectively dealt with that I believe this Commission should hold that such roads are common carriers and should exercise jurisdiction over them as such whenever that can properly be done. Had any of these mills called our attention to this transaction we ought certainly to have granted speedy and effective relief.

Assuming that the 2-cent advance was proper, but that the 3-cent advance was improper, as should be done, in this proceeding, since this latter increase was at the request and for the benefit of the Kaul Lumber Company and its railroad, it will be seen that the net result was to give the Kaul Lumber Company, as the owners of the Sylacauga & Wetumpka Railroad, a division out of a reasonable through rate, which was 1 cent per 100 pounds more than that to which it was fairly entitled.

The Kaul Lumber Company through its railroad has imposed upon its competitor a certain rate and it can not be heard to say in this proceeding that it ought not to pay the same rate itself. That being so, it has already received from these main-line roads more than a reasonable sum for the performance of its service, and it ought not to be awarded, under the guise of reparation, a still greater sum.

No. 3583.

SOUTHWESTERN PRODUCE DISTRIBUTERS ET AL.

v.

WABASH RAILROAD COMPANY.

Submitted March 6, 1911. Decided March 11, 1911.

1. The public stations, depots, and grounds of carriers to a certain extent are also their private property subject to their own control with respect to any private business carried on in or upon them, provided the use so made of the property is in itself reasonable and contributes to the public convenience or to the advantage of the carrier without creating preferences or discriminations as between shippers or travelers.
2. Station restaurants, news stands, barber shops, and similar private enterprises at railroad terminals, ordinarily conducted by outside interests, add to the convenience of the public before the transportation by the carrier has commenced or after it has been completed, and are no part of the service undertaken by the carrier for the public under its published tariffs.
3. Upon complaint by a rival auction company demanding at the St. Louis terminals of the defendant the same facilities for conducting its business as an auctioneer of fruits and vegetables that are accorded exclusively to another auction company; *Held*, That the complaint is without merit, the proof showing that the latter company offers its services to all shippers at a uniform rate and without preference or discrimination.

George E. Mix for complainants.

N. S. Brown for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

For some years the American Central Fruit Auction Company, hereinafter for brevity referred to as the American Company, has been permitted to conduct its business as an auctioneer of fruit and vegetables on the terminal premises of the defendant at St. Louis. From time to time as its own convenience required the defendant has moved the business from one building to another; it is now quartered in one of its warehouses, about 160 feet long by 40 feet wide. Besides having the use of the ground floor of this building the auction company is given space for its general offices on the second floor; additional space in an adjoining building is also available when re-

quired by the volume of the shipments received. The fruits and vegetables are ordinarily unloaded into the warehouse, and stated auctions are held there on Monday, Wednesday, and Friday of each week. Under its arrangement with the defendant the auction company is permitted to sell only such fruits and vegetables as are received at St. Louis over the lines of the defendant or reach St. Louis over other lines from noncompetitive territory. The record discloses no element of discrimination as between the different shippers that wish to use the auction company's services. Nor are we advised that any complaint has been made of the manner in which its duties are performed. It makes a uniform charge of 2½ per cent of the amount realized at the sale.

The defendant explains and justifies the arrangement on the ground that it makes its terminals at St. Louis more useful to shippers and serves as an inducement to them to ship over its lines.

The complaint was filed by the Southwestern Produce Distributors, a voluntary association of dealers in fruits and vegetables, closely affiliated with the St. Louis Fruit Auction Company, hereinafter referred to as the St. Louis Company. It quickly appeared at the hearing that the latter company, organized to compete with the American Company, was the real party in interest, and an order was thereupon entered making it a co-complainant. It is in fact the principal complainant. The real object of the proceeding, fully disclosed as the hearing progressed, was to compel the defendant to set aside a warehouse for its use, or a part of the same warehouse that is used by the American Company, so that it also may conduct a business of auctioning fruits and vegetables at the defendant's terminals. During the course of his testimony the president of the St. Louis Company explained the purpose of the complaint by saying that his company demanded the same facilities that are accorded the American Central Fruit Auction Company in the terminal freight houses of the Wabash in St. Louis. He suggested also that in order to avoid confusion the St. Louis Company could hold its auctions in the same warehouse on the days of the week when no auctions were held by the American Company, namely, on Tuesday, Thursday, and Saturday. It was said, however, that the American Company requires the substantial use of the warehouse during the entire week, the unloading of the cars ordinarily being done during the day, or through the afternoon and night, preceding its auctions. The St. Louis Company, on the other hand, insisted that arrangements could be made so that both companies could use the same warehouse without any substantial inconvenience to either. As an assertion of the right to enjoy equal privileges with the American Company in the defendant's warehouse, the

St. Louis Company endeavored, before filing the complaint, to conduct an auction sale there without the consent either of the defendant or of the American Company. But its employees were forcibly ejected from the place by the police. It is understood that the effort was made in aid of this record and as laying a foundation for the allegation that the defendant had refused to accord the St. Louis Company equal privileges at its St. Louis terminals for conducting its business as an auctioneer, and in so doing was guilty of an undue and an unlawful discrimination against it, as well as against the Southwestern Produce Distributors, the members of which, as is alleged, desire to use the services of the St. Louis Company instead of being compelled to avail themselves of the services of the American Company.

An occasional carload of produce is billed to the American Company to be sold by it at auction, and it thus appears on the shipping records as a consignee. This happens but rarely and only through inadvertence, as we are assured. Except in such instances we do not understand that it is a shipper even in form or that it has any interest, beyond its commission, in the fruits and vegetables that it sells at auction. We were given to understand that it is entirely independent of shippers and shipping interests, and has no relation with the defendant or its officers. We also understand that the defendant receives no compensation from the American Company for the use of the warehouse or for the privilege of conducting an auction business on its terminal property.

The auction sales are not in any sense held on behalf of the defendant and therefore have no relation to the transportation service that it undertakes and offers to shippers. They are simply a convenience of which shippers may avail themselves after the service of transportation has been concluded. It is somewhat analogous to the station restaurant, news stand, barber shop, and other conveniences which travelers arriving at a station may make use of if they so desire. They are enterprises that outsiders are frequently permitted to engage in at railroad terminals, not as a part of the service that the carrier renders the public but as something that adds to the general convenience of the public. The telegraph, telephone, transfer, and cab offices ordinarily found in passenger stations rest upon the same general basis. They add to the convenience of the passenger before the transportation by the carrier has commenced or after it has been completed, without adding to the service undertaken by the carrier for the traveler under its published rates.

Such being the nature of the business carried on by the American Company at the St. Louis terminals of the defendant, a convenience of which all shippers of fruits and vegetables may avail themselves

or not, as they choose, but which is wholly apart from the service of transportation performed by the defendant, the question arises whether the St. Louis Company has a legal right to demand equal facilities for conducting the same business upon the terminal premises of the defendant. If it may predicate an allegation of unlawful discrimination against it by the defendant because the American Company has been given an exclusive privilege of conducting auctions on the terminal premises of the defendant, it would seem to follow that all other auction companies that may hereafter be organized in St. Louis may also demand the same privilege. If one barber is permitted to open a shop in the passenger station of a carrier, other barbers, if the complainant's contention be sound, may demand like facilities; and if a railroad company permits a restaurant or any other enterprise of that nature to be carried on in a passenger station or a freight depot for the general convenience of the traveling and shipping public, it must assign space and equal facilities to all who may apply, so that they also may enjoy an opportunity of serving the public in the same way and at the same place. The mere statement of the proposition seems to require its denial as a legal right. While a common carrier must serve the traveling and the shipping public on equal terms and without discriminations or preferences, we have not understood that, in undertaking to perform certain duties for those who travel or ship their merchandise over its lines, it assumes any obligations to those who do neither the one nor the other. Certainly if any such obligations exist they are not to be found in the act to regulate commerce and are therefore beyond our power to enforce or regulate. Our authority under the act, in a broad and general sense, extends only to the relations between carriers and those who travel or who ship their merchandise over their lines. In performing these services for the public the property of a carrier is subjected to a public use that we may regulate and control in the public interest and for the correction of abuses in the way of discriminations and preferences. But to a certain extent the public stations, depots, and grounds of carriers are also their private property, subject to their own control with respect to any private business carried on in or upon them, provided that what is thus done for the public is in itself a reasonable use of the property and contributes to the public convenience or to the advantage of the carrier. To that extent we seem to be without authority, unless in some way such use of a terminal property creates preferences or discriminations as between shippers or travelers.

The right to grant exclusive privileges of this general nature in passenger stations has been much discussed in the courts both of this country and of England, and has generally been sustained, although in a few of our states it has been denied. The prior cases

on the subject have been collated and many of them reviewed in *Donovan v. Pennsylvania Co.*, 199 U. S., 279. In that case the Pennsylvania Company had made an arrangement with the Parmelee Transfer Company to furnish, at its passenger station in Chicago, all vehicles necessary for the accommodation of passengers arriving on its trains. The question at issue was whether it could legally exclude from its depot grounds and passenger station hackmen and expressmen coming there for the purpose of soliciting for themselves the custom and patronage of passengers. The right to make an exclusive contract with a particular transfer company to supply vehicles to its passengers was sustained, the court saying, page 299:

There are cases to the contrary, but in our opinion the better view, the one sustained by the clear weight of authority and by sound reason and public policy, is that which we have expressed.

Upon consideration of the whole record we think that the St. Louis Company has no standing before us to demand any such relief as it asks. We take the same view of the complainants, the Southwestern Produce Distributors, who contend that they have the right to have the St. Louis Company installed on the terminal premises of the defendant in order that they may use its services as an auctioneer instead of handing their fruits and vegetables over to the American Company to be sold at auction. We think that no such right exists. The auction sales conducted by the American Company are open to all shippers of fruits and vegetables on equal terms and without discrimination. It is a matter, as we have shown, that is wholly outside and apart from the service of transportation performed by the defendant. The company was permitted to establish itself there for the general convenience of all shippers over the line of the defendant. This is a reasonable use for the defendant to make of its property, and, in the absence of some abuse or discrimination against him on the part of the American Company, it is clear that the individual shipper has no right to demand that another auctioneer whom he prefers for some reason shall also be admitted to the terminal premises of the defendant for the purpose of conducting an auction business. It is scarcely necessary to add that we assume that all the facts respecting the relations of the American Company with the defendant and with shippers have been disclosed on the record. It is also understood that, except in occasional cases, due wholly to inadvertence, the American Company is not the consignee of the fruits and vegetables which it sells at auction. Should the practice in that regard be otherwise, the case might stand in quite a different light.

The complaint must be dismissed, and it will be so ordered.

20 I. C. C. Rep.

No. 1675.

RAILROAD COMMISSION OF TEXAS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted April 15, 1910. Decided February 22, 1911.

Upon complaint against the advanced class and commodity rates from St. Louis to Texas common points, made effective on August 10, 1908, by the carriers comprising the Southwestern Tariff Committee and their connections, and after careful consideration of the record, having in mind the interest of the public, of shippers, and of such of the defendant lines as draw their revenues largely if not entirely from those rates, it is *Held*:

1. That the advanced rates as a whole have not so increased the revenues of the defendants as to make them extortionate or to yield earnings that are unduly large, as alleged; and that no grounds have been shown for any substantial disturbance of them.
2. That the advanced commodity rates as a whole are not unreasonable, it being understood that any particular rate or set of rates in those schedules are still open to attack upon any of the grounds ordinarily assigned in challenging the reasonableness of rates.
3. That the present class rates from St. Louis to Texas common points are unreasonable and unduly discriminatory, and that just and reasonable class rates for the future between said points should not exceed those set forth in the report.

Jewel P. Lightfoot, attorney general of Texas, *James D. Walthall* and *R. E. Crawford*, assistant attorneys general, and *S. H. Cowan* for complainant.

Robert Dunlap, *J. W. Terry*, and *N. A. Stedman* for Atchison, Topeka & Santa Fe Railway system.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company and subsidiary lines, and El Paso & Southwestern system.

Fred H. Wood, *C. H. Yoakum*, and *R. C. Duff* for St. Louis & San Francisco Railroad Company and subsidiary lines.

F. C. Dillard, *H. M. Garwood*, and *J. P. Blair* for Southern Pacific lines.

James Hagerman; *Joseph M. Bryson*; *Coke, Miller & Coke*; and *A. H. McKnight* for Missouri, Kansas & Texas Railway Company and its lines in Texas.

James C. Jeffery, Martin L. Clardy, and Alexander G. Cochran for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

S. H. West, E. B. Perkins, and Roy F. Britton for St. Louis Southwestern Railway Company and subsidiary lines.

John A. Eaton; J. W. McLoud; Duval West; E. C. Eliot; J. W. Terry; Baker, Botts, Parker & Garwood; T. J. Freeman; Andrews, Ball & Streetman; Coke, Miller & Coke; E. B. Perkins; M. A. Spoons; N. H. Lassiter; A. W. Houston; Hiram Glass; W. L. Hall; Claude Pollard; R. C. Duff; and N. A. Stedman for various other defendant companies.

S. H. Cowan, J. C. Lincoln, H. C. Barlow, and U. S. Pawkett for the various interveners.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

On March 15, 1903, all the class rates and most of the commodity rates from St. Louis and Kansas City to Texas common points were advanced by the carriers interested in that traffic, the extensive territory taking rates based on St. Louis being also necessarily affected by the increase. This readjustment of rates on a higher level was the occasion of a thorough investigation instituted by the Commission for the purpose of inquiring into the question of their reasonableness. The report was announced on August 16, 1905, under the title *In the Matter of Class and Commodity Rates from St. Louis to Texas Common Points*, 11 I. C. C. Rep., 238; and the view expressed was that while the advances on the whole seemed to be without justification this did not appear with sufficient certainty to warrant the Commission in ordering the old rates to be restored.

Although many individual rates were subsequently modified the rate structure established at that time was not subjected to any general revision until August 10, 1908, when the railroads comprising the Southwestern Tariff Committee, and their connections, again advanced the class rates from St. Louis to Texas common points, the increases ranging from 10 cents per 100 pounds on class 1 to 4 cents per 100 pounds on class E. Advances were also made in many of the commodity rates. These advances had the effect also of increasing the rates from the territory east of the Mississippi River regardless of the crossing through which the traffic moves, the rates from that territory to Texas common points being based generally upon the St. Louis rates.

On the same day on which the increased rates went into effect the Railroad Commission of Texas filed this formal complaint attacking them as unjust, unreasonable, and discriminatory. While the petition also alleges that the advance of March 15, 1903, resulted in unjust and unreasonable rates and asserts that the rates in effect prior to that advance

were just and reasonable under the conditions then prevailing, the record is directed almost entirely to the increased rates that became effective on August 10, 1908. One of the defendants, as we may say in passing, regards it as clear that upon a comparison of the schedule of 1903 with the schedule of 1908 it will be found that the rates as a whole have been reduced since the advance of 1903; and the leading traffic witness for the interveners conceded that the advance of 1903 had not operated to impede the free movement of traffic to Texas common points or to yield the carriers unreasonably large earnings. In our view of the record the only substantial issue before us is as to the propriety of the advance of 1908. It is alleged, however, that both these readjustments of the southwestern rates were the result of concerted action on the part of the defendants and were therefore in violation of the so-called Sherman anti-trust act.

Shortly after the petition of the complainant had been filed, some 15 traffic associations and shippers of St. Louis, Chicago, and Texas, as well as other persons interested in rates to the southwest, filed intervening petitions also attacking the new schedule of rates as unreasonable and discriminatory; it may be well to add that one or two associations in Texas on being requested to intervene declined to do so. Issue having been joined in this broad way the cause was set for hearing at St. Louis, and subsequently at San Antonio. Some testimony was also taken at Chicago and at Washington. The result is a record of over 3,500 typewritten pages, which has been carefully abstracted in printed form. There have also been prepared three printed volumes embracing more than 250 exhibits in which the financial, traffic, rate, and other statistics bearing upon the controversy are exhaustively laid before us. The case is carefully presented upon briefs, and was also argued orally and at length by counsel representing the various interests involved. While the record has been subjected to careful scrutiny and study we regard it as unnecessary to attempt in this report to set forth any extended summary of the testimony or of the exhibits. From the view that we take of the controversy it will suffice to make a brief outline of the record, and with equal brevity to indicate our conclusions and the reasons that have led us to these results.

It may be well, in the first place, to refer to the contention of the complainant that the rate advances in question were the result of an agreement between the carriers in violation of the so-called anti-trust act, and that this raises a presumption that they were unreasonable. This point has been urged in other cases and the Commission has uniformly held that it has no powers in the enforcement of that legislation; so that even if the rates were advanced by agreement as alleged, that fact does not furnish a foundation upon which we may base a finding that they are unlawful under the act that we administer. We need not therefore examine the testimony with a view to ascertaining

whether or not it shows a concert of action on the part of the defendants resulting in the advance in rates of August 10, 1908. Nor shall we indulge against the advanced rates any presumption of unreasonableness on the theory that they were established in consequence of an agreement among the defendants.

Counsel for the complainant seem to think that the larger part of the traffic to Texas points moves on class rates. The defendants, on the other hand, assert that the bulk of the traffic moves upon special commodity rates, or under exceptions to the classification having the effect of commodity rates. Their leading traffic expert presented exhibits indicating, as he thought, that an overwhelmingly greater proportion of the total traffic must move on commodity rates. He thought, indeed, that this would be self-evident to one experienced in such matters, and his own view was that not to exceed 7 per cent of the total movement takes class rates. The chief rate witness for the complainant was of the opinion that no more than 20 per cent takes class rates. We may properly assume that an exact statement of the class tonnage would lie somewhere between these two estimates.

In the tariff of August 10, 1908, there were about 110 special commodity items naming rates to Texas common points from the Mississippi River and territory beyond. It appears that advances were made in 54 of these items while 44 carried reductions, and in 12 items the commodity rates were unchanged. One of the exhibits offered by the defendants shows the number of changes made between 1903 and 1908 in the rates on articles moving under commodity rates or on exceptions to the classification. It indicates the number of reductions as well as the number of advances made in such rates during that period. The total changes between March 31, 1903, and July 31, 1908, in tariff series I, as shown on the exhibit, amounted to 2,399, of which 1,730, or 72 per cent, were reductions, and 669 changes, or 28 per cent, were advances. The changes made in other tariff series are worked out in the same way, and show substantially similar results. The exhibit, however, as the complainant points out, is without special value when considering the particular issue now before us, for the advances may have been applicable to a substantially greater volume of tonnage than moves under the reduced rates, in which event their percentage of the total rate changes would fail to indicate the real result of the changes on the revenues of the defendants. The utmost that may be said of the exhibit is that it shows an apparent tendency during the five years from 1903 to 1908 toward a reduction in commodity rates and in rates applicable on articles moving under exceptions to the classification. It may be well at this point to note that after this petition was filed substantial reductions were made in a number of the commodity rates advanced on August 10, 1908, so that at the time of the oral argument, as counsel for the complainant conceded, some of the grounds

of complaint had voluntarily been removed by the defendants. It is also doubtless true that in some instances the rates then advanced have since been still further increased.

The class rates in effect before and after August 10, 1908, are shown, in cents per 100 pounds, on the following table:

Class	1	2	3	4	5	A	B	C	D	E
Old Rate.....	137	121	104	96	75	79	70	58	46	39
New Rate.....	147	129	112	102	80	85	75	62	50	43

The amount of the advances made on that date in the several classes, in cents per 100 pounds, were as follows:

Class	1	2	3	4	5	A	B	C	D	E
Advance....	10	8	8	6	5	6	5	4	4	4

It should be noted also that the class rates put in effect on March 15, 1903, above contrasted with the new rates of 1908, were themselves substantially higher than the class rates that were in effect on January 1, 1894, as is shown on the following table:

Class	1	2	3	4	5	A	B	C	D	E
Rate of 1894.....	130	113	97	90	70	74	65	54	43	39
Rate of 1903.....	137	121	104	96	75	79	70	58	46	39
Increase	7	8	7	6	5	5	5	4	3	0

The advances in the class rates necessarily had the effect of advancing the rates, in substantially similar percentages, on articles moving under exceptions to the classification. The advances in the commodity rates varied and can best be ascertained by an examination of the new rates with the old rates. It is said that the average advance was about the same as the average advance in the class rates. The rates on a number of important commodities, of which there is a heavy tonnage, were not touched at all, among them being grain, grain products, live stock, lumber, sash, doors, coal, packing-house products, sugar, molasses, glucose, and canned goods; many of these rates could not be increased because they were still under the control of orders entered by this Commission in formal proceedings.

The extent of the traffic affected by the advanced rates does not clearly appear. Counsel for the Texas lines, taking a middle ground between two other estimates of 40 and 60 per cent, seem to think that they affected about 50 per cent of the Texas interstate traffic. Counsel for the complainant, on the other hand, assert very positively that the traffic moving under the increased rates did not exceed 10 per cent of the total tonnage of any one of the railroads involved in this proceeding, and in most cases did not exceed 5 per cent of their tonnage. The two views, being based upon different standards of comparison, are not necessarily inconsistent, but we infer that the defendants think the advanced rates affected a larger volume of traffic

than the complainant is willing to concede. Nor was there any agreement among counsel as to the amount of the increase in the revenues accruing to the defendants under the new schedules. The freight traffic manager of the Missouri, Kansas & Texas, speaking of his own road, said that the increase affected only a small part of the traffic and that "we do not get enough added revenue to pay us for the trouble we have gone to in trying to sustain the advance." Referring to the wholesale rate changes made since the advance of 1903, aggregating about 8,000 items in all, in which, he asserts, reductions predominated, counsel for the Rock Island says that it "is not even clear that the readjustment of 1908 resulted in any added income to the carriers, although it was undoubtedly the intention that should be the effect." It is alleged in the petition that the advanced rates will add \$2,600,000 a year to the revenues of the carriers, but no testimony on the point was offered by the complainant. Counsel for the Texas companies express the opinion that the total increase in the revenues of the carriers defendant "would range in the aggregate anywhere from \$500,000 to about \$1,250,000 per annum."

The hearing proceeded largely upon the general theory that the question before us was whether the financial condition of the defendants was such as to warrant this increase in their net earnings. It was alleged in the petition that the rates complained of were extortionate upon the basis of the value of the defendant properties, and unreasonable as well as discriminatory on other grounds. At the opening of the hearing the complainant, through its counsel, undertook to show in support of this and kindred allegations that the average net earnings of the defendants upon the fair value of their several properties exceeded the average net returns on business enterprises in general in that part of the country. The defendants on the other hand undertook to justify the increased rates by showing a need of additional revenue. As heretofore stated, no less than 250 exhibits were offered in evidence before the taking of testimony was concluded, many of them relating to the financial condition of the defendants and analyzing in various ways their revenues and the general nature of their traffic and their earnings. With one or two exceptions no witness was called to testify as to the reasonableness of any particular rate that went into effect on August 10, 1908. As a matter of fact it was announced by the Commission at the first hearing that the reasonableness of individual rates would not be looked into upon this complaint. Stated generally, then, the question before us is whether the net earnings of the defendants upon their several properties were such as to justify them in securing an increase of revenue by readjusting their rates on a higher level. As an incident to this general issue is the related question, strongly urged upon our attention by the complainant,

whether, assuming that further revenues were reasonably required in order to yield the defendants just returns on the value of their investments, the defendants could properly increase their earnings, with that end in view, by putting the burden upon a small part of their traffic instead of spreading it more widely over their whole traffic. The defendants took the position, on the other hand, that when rate advances covering as much as 50 per cent of the traffic are challenged as being unjust and unreasonable, and the defense is that additional revenue is required in order to earn a reasonable return on the investment, the allegation of unreasonableness is met if that defense is established.

The testimony touching the revenues of the defendants and the value of their lines is so voluminous and the exhibits so numerous and so varied in character and purpose that it will serve no useful end to attempt to describe and analyze them extensively in this report. Out of the mass of available financial statistics in the record the complainant calls special attention to a table, and a compilation based upon it, both set forth in full in its brief. The table was prepared by our division of statistics from reports made by the defendants to the Commission for the fiscal years ending June 30, 1903, 1904, 1908, and 1909. It embraces certain figures respecting each of the many defendants to this complaint. The compilation based upon it is limited to a few of the more important lines shown on the table; using the figures of the table it purports to show that the profits for the fiscal year 1909 were sufficient to yield returns on a valuation of \$25,000 per mile, ranging from 5.17 per cent, in the case of the International & Great Northern, to 16.77 per cent, in the case of the Atchison, Topeka & Santa Fe; and returns, on a valuation of \$30,000 per mile, ranging from 4.31 per cent to 14 per cent, respectively. The table is relied on as showing that the returns on the investments of the defendants in their railroad properties were "ample to pay 6 per cent on valuations of from \$30,000 to \$70,000 per mile;" and the compilation is regarded as demonstrating that the earnings of the defendants generally were such as not to justify the advance of 1908 in their rates.

The table and the compilation have impressed us as affording a simple and clear starting point for this inquiry; but in view of the extent of the table we shall reproduce from it here only the figures relating to the Missouri, Kansas & Texas Railroad Company. Of the four trunk lines that are defendants, namely, the Missouri, Kansas & Texas, the Atchison, Topeka & Santa Fe, the Chicago, Rock Island & Pacific, and the St. Louis & San Francisco, it is believed that the Missouri, Kansas & Texas from a traffic standpoint is probably the most typical and representative. The other three defendants operate large systems with lines running into and through a much wider and more

diversified territory, while all the traffic moving over the Missouri, Kansas & Texas, under the rates involved in this proceeding, passes over its main line extending to Texas points both from St. Louis and from Kansas City. The figures of the table relating to that road are as follows:

Name of road and item.	Year ending June 30—				Increase, 1909 over 1903.		Estimated valuation per mile of road operated, 1909.	
	1903	1904	1908	1909	Amount.	Per cent.	On basis of 6 per cent net operating revenue.	On basis of 5 per cent net operating revenue.
Missouri, Kansas & Texas Railway Company:								
Operating revenues per mile of road.....	\$6,628	\$6,160	\$7,579	\$8,236	\$1,613	24.35	.....	.....
Operating expenses per mile of road.....	4,806	4,511	5,349	5,751	945	19.66	.....	.....
Net operating revenue per mile of road.....	1,817	1,649	2,230	2,485	668	36.76	\$41,417	\$49,700

The comparison in the fourth and fifth columns of this table between the net operating revenues of 1903 and 1909 is not accurate, for the reason that the accounting system of that company in 1903 differed somewhat from that later put in effect under the order of this Commission. From the operating expenses per mile of road for 1903, amounting to \$4,806, should be deducted, to make the comparison accurate, the sum of \$291 per mile for additions and betterments charged to operation during that year. This gives us a net operating revenue of \$2,108 per mile of road, instead of \$1,817, and reduces the percentage of the "Increase, 1909 over 1903" from 36.76 to 17.88.

The compilation based upon the foregoing table also shows some slight inaccuracies in the statement of the percentages; but disregarding these errors as immaterial, it is reproduced here in full from the complainant's brief:

Railroad company.	Net operating revenue per mile of railroad for year 1909.	Equals following per cent of profit on a valuation of \$25,000 per mile.	Equals following per cent of profit on a valuation of \$30,000 per mile.
		Per cent.	Per cent.
A., T. & S. F.....	\$4,207	16.77	14.00
C., R. I. & G.....	1,821	7.28	6.07
C., R. I. & P.....	2,851	9.40	7.84
Ft. W. & R. G.....	2,220	8.88	7.40
G., H. & S. A.....	2,104	8.41	7.01
G., C. & S. F.....	2,200	8.80	7.33
H. & T. C.....	1,849	7.40	6.16
M., K. & T.....	2,485	9.94	8.58
I. & G. N.....	1,293	5.17	4.31
St. L. & S. W.....	2,641	10.56	8.80
St. L., I. M. & S.....	2,846	11.38	9.49
T. & P.....	2,112	8.45	7.04

We do not know what instructions were given to our division of statistics when it was requested to prepare the table, but it seems to be reasonably clear that it was not informed of the theory which it was intended by counsel to illustrate. We have verified the figures and, except in the particular above referred to, find them to be accurate with respect to what they purport to show. It is apparent, however, that the table has no such significance as is assigned to it.

The net operating revenues of the Missouri, Kansas & Texas for the year 1909 are stated on the table at \$2,485 per mile of road, and this, based on the 3,072.21 miles of road operated, is substantially correct, the exact amount being \$2,484.86. At the end of the table is a computation showing that \$2,485 is 6 per cent on a hypothetical valuation of \$41,417 per mile of road operated, and 5 per cent on a hypothetical valuation of \$49,700 per mile. In the table, as it appears in full in the complainant's brief, larger results are shown with respect to some of the defendants and smaller results with respect to others. The table as a whole is relied on as showing that the present and prospective earnings of the defendants are such as to afford no justification for the advances in their rates. But as a matter of fact the table is a mere computation. The "net operating revenue" of a railroad is not a basis, upon which we may rest conclusions as to the profits on the investment. A number of deductions must first be made before we can know what has been the net return to the owners of the property on any given valuation per mile of road. Taxes, for instance, are not regarded as an operating expense, since they run against the property whether it continues in operation or not. In the case of the Missouri, Kansas & Texas they amounted for the year 1909 to \$967,308.70, or at the rate of \$314.86 per mile of road operated. The table takes no account of this important item. For the year ending June 30, 1909, the gross operating revenues of the Missouri, Kansas & Texas system from rail operations, less operating expenses, were \$7,633,508.56. If to this amount we add \$65,615.14, representing the payments made by other lines for the use, as joint facilities, of certain portions of the mileage owned by the Missouri, Kansas & Texas, we get an aggregate income from operation during that year of \$7,699,123.70. After deducting the gross taxes to the amount above mentioned and a deficit of \$13,693.98 in the conduct of outside matters having only a collateral relation to railroad operations, and deducting also the amount of \$77,277.82 paid for the hire of equipment, we arrive at the sum of \$6,640,843.20 available for the payment of rents for the use of the facilities of other carriers, and for road exclusively leased, and for interest on the funded debt, and for dividends on the outstanding stock. That aggregate amount, when divided by the total operated mileage, namely, 3,072.21 miles, gives us the sum of \$2,161.59 per mile of road operated instead

of the sum of \$2,485 shown on the table in question. The rents for the use of facilities of other carriers, amounting in 1909 to \$518,262.73, are omitted from this computation on the theory that they are analogous to interest on capital invested in the property in the form of its funded debt. It thus appears that the Missouri, Kansas & Texas, instead of showing a net return during the year 1909 on its entire system of 6 per cent on the valuation of \$41,417 per mile of road operated, as indicated in the table, actually earned a return at that rate on a valuation of \$36,026 per mile; and instead of earning a return of 5 per cent on a valuation of \$49,700 per mile of road operated, as the table indicates, actually earned a return at that rate on a valuation of \$43,232 per mile. The earnings for that year, available for rents, interest, and dividends, amounted to 7 per cent on a valuation per mile of road operated of but \$30,880. The figures for the year ending June 30, 1910, were not shown in the table, but working them out in the same manner from the company's report to the Commission we have ascertained that its net return for that year per mile of road operated was \$2,055.77, being 5 per cent on a valuation of \$41,115 per mile of road operated and 6 per cent on \$34,263 per mile. It was 7 per cent on but \$29,368.14 per mile. The net return ascertained for the year 1908 amounted to \$2,026.16 per mile of road operated, or slightly less than for 1910. These corrected figures materially reduce the percentages shown in the compilation on the assumed valuations of \$25,000 and \$30,000 per mile, the net earnings for 1908 and 1910 being less than 7 per cent on \$30,000 a mile, instead of 8.58 per cent, as shown on the compilation.

The importance of these figures is obvious. In the first place it must be remembered that the return of the Missouri, Kansas & Texas on its investment, available for interest and dividends, as we have endeavored here correctly to state it for the years 1909 and 1910, includes the increase in revenues accruing under the advanced rates of which complaint is made, and would of course be modified if worked out on the basis of the old rates. At this point it may be well also briefly to refer to the testimony of the engineer of the complainant as to the value of the property. He put the average value per mile of fifteen roads in the state of Texas at \$22,082.35, to which he added for betterments, paid for out of operating expenses and not reported, the sum of \$3,000 per mile, making an approximate average value of \$25,000 per mile, based on the Texas commission's valuation of 1894, plus expenditures for permanent improvements since made. He excludes any subsequent increment in the value of the real estate composing the right of way and terminal properties of these roads, and excludes also any allowance in the value of the road on account of the element known among railroad engineers as "seasoning." The witness also conceded during the course of his testimony that the valuations made by the state commission in 1894

were "close" valuations, and did not include some factors entering into the cost of construction that are now included when valuations are made in that state. He refers to the subsequent valuations as being more liberal. Moreover, on cross-examination he stated that if valuations of the same roads should be made to-day, that is to say, in 1909, they "would run upward of \$30,000 per mile." He also affirmatively assigned to the Missouri, Kansas & Texas lines in Texas a value in 1909 of \$30,000 per mile. In making this statement it is understood that he included the value of its real estate at that time, but again excluded the item of seasoning. In this connection it is not without interest to note that the lines of that company in Texas were assessed in 1908 for taxing purposes at a sum aggregating \$31,085 per mile.

In view of the more settled conditions prevailing in the states of Kansas and Missouri we can not doubt that if an inventory or physical valuation of the lines of the Missouri, Kansas & Texas in Oklahoma, Kansas, and Missouri were now made by the same witness and in the manner in which valuations are to-day made in Texas he would give to the road in those states a somewhat higher value than he concedes to the Texas lines of that company. If so the valuation that he would place upon the whole system would be higher than the \$30,000 per mile that he assigned in 1909 as the value of its lines in Texas. Just how much his estimate would be on the lines in the other three states is a matter of conjecture. The lines in Kansas were assessed in 1908, for the purposes of taxation, at a sum aggregating \$40,809 a mile, and in Oklahoma at \$37,195 a mile. The lines in Missouri were assessed in the same year at the rate of \$15,058 a mile, and the explanation made of record is that property in that state is assessed for taxing purposes at one-third its real value. It is also said that property in Oklahoma is assessed at but two-thirds of its value. If we attach any significance to these official tax figures as having some relation to the real value of the property it seems reasonable to conclude that the estimate for the whole system of this company, if now made by the engineer of the Texas commission and on the Texas basis, would exceed the valuation of \$29,368.14 per mile upon which, as above shown, the net profit on the investment for the year 1910 yielded a return of 7 per cent. And such income, it must again be observed, accrued under the advanced rates of 1908, of which complaint is made. We do not hesitate to conclude from the information at hand that, if the figures relating to the other defendant carriers, as shown on the table and compilation, should be analyzed and corrected in the way in which we have here corrected and attempted to analyze the figures relating to the Missouri, Kansas & Texas, the net income, available for interest and dividends, of the majority of them would be found to yield materially less than 6 per cent on a valuation of \$30,000 per mile.

The foregoing estimate of \$30,000, which the engineer of the state commission assigned as the value per mile of the Missouri, Kansas & Texas in 1909, is confined, as heretofore indicated, to the lines of that company in the state of Texas. Although it makes allowance for the increased value of the real estate it is based largely on the valuation of the property made by that commission in 1894. In the proceeding in which the advance of 1903 was under consideration (*supra*), this Commission, while expressing the opinion that the valuations made by that commission in 1894 had not been made in a haphazard way, as there contended, but on a well-defined plan, nevertheless pointed out some defects in them. We do not wish to be understood as here criticising the valuation then made of the Missouri, Kansas & Texas property, or of any of the properties involved in this proceeding. We now know, however, from the engineer of that commission that they were close and not liberal valuations and were made without including some items that have been allowed for in its subsequent valuations.

No physical or inventory valuation of the property of that company in Oklahoma, Kansas, and Missouri has been put on the record before us; nor has any official valuation been made in those states so far as the record indicates. We have no available basis, therefore, for arriving at any notion of the value of the whole system. Under these circumstances we have thought that it might throw light on the question before us to get some idea of its market or commercial valuation as of a date approximating as closely as possible the date of the Texas commission's valuation of the Texas end of the system. And this we have done, as we shall endeavor to explain in some detail.

The Missouri, Kansas & Texas system as a whole, comprising a total owned mileage of 2,768.12 miles, was capitalized on June 30, 1910, at the rate of \$68,837 per mile, the outstanding capital consisting of \$13,000,000 in preferred stock, \$63,301,200 in common stock (including nine shares of the Texas company not accounted for), and \$114,249,000 in bonds, making an aggregate of \$190,550,200 of securities outstanding, excluding \$3,600,000 of short-time notes not assignable to the railroad property. The "cost of roads and equipment" account on that date, less the reserve for accrued depreciation, is shown on the books of the company at \$191,168,283.39, or an average of \$69,060.69 per mile. The capitalized value per mile of road is not to be regarded, however, as having any significance in this controversy, nor do we attach any weight to the book value appearing on the accounts of the company. They are shown here simply by way of comparison with what is claimed by the petitioners to be the real value of the property and with what we hereinafter refer to as its restated value.

The company went into the hands of receivers on November 1, 1888, and was turned back to the owners of the property on July 1, 1891, having been reorganized without a foreclosure. The receivers' books, covering three years, and the general books of the reorganized company from July 1, 1891, to July 1, 1900, a period of some twelve years in all, have disappeared. We have ascertained from our own records, however, that the capital stock and bonds outstanding when the receivers took the property amounted to \$93,040,344.65. In the reorganization the old securities were retired and new securities were issued aggregating \$124,310,000. It thus appears that over \$31,000,000 of additional capital securities were issued in the reorganization, although there was substantially no increase in the mileage of the company, and no capital expenditures that we have been able to locate beyond the sum of \$4,207,749.03, expended by the receivers on account of betterments and equipment. The entry transferring the property from the receivers to the owners was not available, but it is apparent that the new securities were charged to cost of road and equipment at par, for that account one year after the reorganization was about \$1,000,000 in excess of the company's capital obligations. The reorganization, therefore, does not appear to have lightened the financial burdens of the company; on the contrary, it seems to have reshouldered its load with substantial additions and with no corresponding increase of its capital assets representative of cash expenditures.

While it is true that market quotations are subject to many influences that have little relation to earning power, nevertheless, in the absence of a physical or inventory valuation, or of an opportunity to investigate the company's early books of account, the market value is the only means now available to us for arriving at any impression as to even the approximate cash value of the property at the time of its reorganization. Starting, then, on June 30, 1892, one year after the reorganization, when the cost of road and equipment account, as shown on the company's books, amounted to \$125,295,641.96 and covered 1,513.92 miles of road, it appears that the average book cost per mile was \$82,762.39. On the basis of the quotations on the company's principal issues of stocks and bonds on that date, using the book value of the securities on which no quotations were available, the market value of the \$124,310,000 of securities then outstanding was but \$54,717,066.25, an apparent overcapitalization, one year after the reorganization, of \$69,592,933.75. Deducting this amount from the cost of road and equipment on June 30, 1892, as above stated, there is left the sum of \$55,702,708.21 as the restated or commercial value of the property at that time. On this basis the commercial or market value, per mile of road, of the entire road both inside and outside the state of Texas, at a period almost two years

prior to the date of the valuation of the Texas portion of the system by the Texas commission was \$36,793.69, which seems to be less than the company's outstanding bonded obligations per mile of road on that date. It may be well here to add that this hypothesis must be accepted with a full understanding of the conditions that may affect its value for this purpose, and upon the assumption that normal conditions existed in the security market on the date in question. As a matter of fact, there were some fluctuations during 1892 in the market quotations on these securities, but they were not extensive enough materially to modify these computations.

Writing off, as explained, some \$69,000,000, and assuming the value of the road on June 30, 1892, to have been \$55,702,708.21, as stated, we find that the company subsequently acquired 1,254.20 miles of road, for which it issued or assumed securities to the extent of \$43,252,800. This sum appears on its books as the cost of the additional road and equipment. Instead of accepting that amount, we have taken the market value of such securities, of the acquired properties or of the parent company issued in the acquirement, as were quoted on the day on which the several additions to the system were made, amounting to \$17,455,008, and have taken the book value of the securities on which no quotations were available, amounting to \$12,278,500. The two sums aggregate \$29,733,508, and this amount we use in our computation instead of the sum of \$43,252,800 shown on the books of the company as the cost of the additional mileage and equipment. Added to the restated value heretofore given we get a total of \$85,436,216.21, to which we add \$21,505,868.11 for coal properties acquired, new equipment purchased, and expenditures for construction and improvements charged to cost of road and equipment, making a total of \$106,942,084.32, which may be defined as the restated cost of the road and equipment on June 30, 1908. To this sum we add certain items representing permanent improvements made and new equipment acquired between 1893 and 1907, and charged to operating expense; certain improvements made and new equipment acquired, and charged to income from 1902 to 1909; and certain improvements made in 1910 and charged to profit and loss, the details of which need not be here stated, but which aggregate \$15,174,889.89. We also add, on account of permanent improvements made and new equipment acquired in 1909 and 1910, the sum of \$1,701,764.32, which amount was charged to road and equipment. After making certain adjustments resulting in a net deduction of \$474,637.96, we arrive, as the restated value on June 30, 1910, at the sum of \$123,344,100.57 covering a total mileage of 2,768.12 miles owned, and 19.29 miles of road leased, the total apparent investment per mile of road owned on

this hypothesis being \$44,475.17, and that of the leased mileage being put at the arbitrary value of \$12,000 per mile assigned to it in the lease.

We take up now the net earnings of the company in order to ascertain their percentage on that valuation per mile of road. From the total net operating revenues we deduct taxes, the hire of equipment, and rents paid for the use of joint tracks, the revenue from which is included in the gross operating revenues; we also deduct rents accrued for 19.29 miles of track leased from the Vicksburg, Shreveport & Pacific Railroad Company. The result for the year 1910 is a net return, available for interest and dividends, on the restated valuation of 4.74 per cent, and of 5.15 per cent for the year 1909. In this computation we have included \$14,570,077.87 expended for permanent improvements and new equipment and charged to operating expenses and to income, and \$604,812.02 charged to profit and loss in 1910. If these amounts be eliminated, and this we think may be done for the purposes of this computation, the restated value as of June 30, 1910, will be \$108,169,210.68, which gives a total apparent investment per mile of road of \$38,993.16. And upon this valuation the net return during that year, applicable to interest and dividends, was but 5.41 per cent.

In the restated value, as here worked out, we have accepted at par the securities of the various lateral and other roads acquired by the Missouri, Kansas & Texas during the years mentioned, as to which no market quotations were available. If the means were at hand to arrive at the actual cost of these additions on the several dates on which they are entered upon the books of the company, we may fairly assume that the restated valuation on this hypothesis would be somewhat less than we have indicated. Whether the increment in the value of real estate embraced in the right of way and terminals of a railroad company may be lawfully excluded as an earning asset is a question to which we shall allude briefly later in this report. For the purposes of this computation we have made no allowance on that account, our restated value of \$38,993.16 per mile being based on the market value of the securities of the parent company on July 1, 1892, and the market value of the securities of the acquired properties at the time they were absorbed into the Missouri, Kansas & Texas system. If, now, from that valuation we charge off even as much as 20 per cent to the optimism or future expectations of the owners of the property, we shall arrive at a valuation per mile of road for the entire system that may be accepted as reasonable, or at least as a valuation approximating a conservative valuation as closely as the information now at hand will justify. On that basis the net income on the investment applicable to interest and dividends during each

of the last three fiscal years was sufficient to pay the owners a return of less than 7 per cent. This return, it is again well to bear in mind, includes the benefit of such increased revenues as accrued to the company under the increased rates of which the petitioners here complain.

If the Santa Fe and the Rock Island, and one or two other of the defendants that participate in transcontinental traffic and enjoy revenues on a heavy tonnage from other territory, be excluded and the accounts of the remaining defendants named in the table and compilation be subjected to the same sort of analysis they would show, in nearly if not in all cases, a substantially less percentage of net returns on conservative valuations than is here worked out for the Missouri, Kansas & Texas. Some of the Texas roads engaged in this traffic, even on the valuations placed upon them by the engineer of the state commission, seem to show a net income from operation, less taxes, for 1907, 1908, and 1909, averaging less than 6 per cent, among these being the Gulf, Colorado & Santa Fe, the Galveston, Harrisburg & San Antonio, and the Houston & Texas Central. The average income from operation, less taxes, of the Texas & New Orleans for those three years is shown to have been but 4.34 per cent on the valuation made of that line by the state commission. All these roads show materially less average returns on valuations made by expert witnesses for the defendants. On the whole the defendant carriers seem not to have prospered as carriers in many other parts of the country have prospered.

The rate advance of 1908 is explained and justified by the defendants on the general ground that the returns on their investment in their respective properties under the schedule of 1903, as subsequently amended and changed from time to time and as in effect prior to August 10 of that year, were insufficient. In addition to the exhibits, offered in support of that contention and showing the general financial condition of these properties, a number of special exhibits were put in evidence to show that many things have contributed since 1903 to increase the cost of operation in the conduct of this traffic. The extension of the so-called common-point territory in Texas, partly as the result of the voluntary action of the carriers and partly in obedience to the orders of this Commission, has served to increase the service rendered by lengthening the haul, and consequently to reduce the earnings per ton-mile. The extension has not only reduced the rates to points in the territory added to the common-point territory, but has had the effect also of reducing rates to points in a substantial territory west of the common-point territory that takes differentials over the common-point rates.

Among other special items affecting the income of the defendants was an extraordinary increase in recent years in the amounts paid in set-

tlement of claims arising out of injuries to persons and property. The exhibits offered in this connection show a general tendency toward an increase in this account on all the lines of the defendants but more particularly on their lines in the state of Texas. For some reason not clearly explained of record the amounts paid by carriers on account of such injuries occurring in that state were largely in excess, on almost any basis of comparison that can be suggested, of the amounts paid by carriers elsewhere in the United States. We find of record one exhibit showing during the year 1906 total payments of this nature in the United States, excluding Texas, of \$16,087,073, while the payments made during the same year in the state of Texas alone aggregate \$1,379,791. The same exhibit shows an average during seven years in Texas, on account of personal-injury payments, of 4.450 cents per mile as against 1.233 cents per mile outside of Texas. But we shall not go through these figures in detail. It will be sufficiently illustrative of the extent of such expenditures by the defendants generally to show the experience of the Missouri, Kansas & Texas in 1909. During that year it paid out on account of personal injuries in the state of Texas \$329,808, while the total payments on account of such injuries occurring on its lines outside that state amounted to but \$99,266. This difference in results inside and outside the state seems to be characteristic on the lines of that particular company in other years and characteristic also of the ordinary results with all the defendants. Another exhibit offered by the statistician of the complainants shows that payments made by the carriers in Texas on account of personal injuries in that state have increased from \$223,749 in 1891 to \$2,190,186 in 1909, the latter being the largest amount in the history of those companies.

Confining ourselves again to the exhibits relating to the Missouri, Kansas & Texas, we find that another element that has served to reduce its revenues since 1903 is the reductions in rates that have been made on state as well as on interstate traffic. In Missouri, Kansas, and Oklahoma passenger fares were reduced by legislative action from 3 cents to 2 cents a mile, and one unavoidable result was a substantial reduction also in the interstate fares. Basing his estimate upon the volume of traffic moving between points north of the river during the fiscal year ending June 30, 1908, the auditor of the company stated that the reductions in revenues would amount to not less than \$700,000; he estimated an additional decrease in earnings on the interstate passenger traffic to and from Texas of from \$125,000 to \$150,000; making a total estimated reduction in revenues on account of the legislative reduction in passenger fares of from

\$825,000 to \$850,000 during that year. The revenue per passenger-mile for the Missouri, Kansas & Texas in 1908 is reported at 2.04 cents, while in 1907 it was 2.26 cents.

The defendants have also been required by the orders of this Commission to make a number of reductions in their interstate rates. Some of these orders have materially reduced their gross revenues. As a result of a number of formal complaints we have required these carriers to make a general reduction in their coal rates. As coal is said to comprise about 30 per cent of the total traffic of the Missouri, Kansas & Texas, the reduced rates have made some difference in the revenues of that line. We have also ordered reductions on live stock, and one estimate shows that this affects the revenues of the Missouri, Kansas & Texas by from \$105,000 to \$115,000 a year. In these proceedings reparation on past shipments was also ordered to the extent of from \$220,000 to \$230,000. These compulsory rate reductions have also materially affected the gross revenues of other defendants.

Another matter of no small importance in relation to the revenues of the defendants is that of taxes. The increase in Missouri in the taxes paid by the Missouri, Kansas & Texas in 1908 over payments made in 1903 amounts to but \$15,000. The increase in Kansas amounted to \$31,000. In Texas, however, the taxes increased from \$110,091.39 in 1903 to \$238,239.90 in 1908. In Oklahoma the taxes increased from \$22,851.56 in 1904 to \$517,169.53 in 1908. A compilation offered in evidence shows that the taxes on fifteen roads in the state of Texas increased from \$1,036,127 in 1903 to \$2,814,425 in 1908, or in round numbers an increase of \$1,700,000. The increase in the state of Oklahoma on the Frisco lines alone in 1908 is put at \$794,000. In looking at the effect of these tax increases on all the lines the statement is made that the increases in revenues from the increased rates will not equal one-half the increase in their annual taxes of 1908 over the taxes of 1903.

Other exhibits show an estimated cost to the Missouri, Kansas & Texas of \$750,000 for shortening its freight divisions in order to comply with the hours of service law; and many of the other defendants have been compelled to make substantial expenditures on that account. The safety-appliance act, local laws requiring the separation of whites and blacks both in passenger trains and in passenger stations, state laws requiring electric headlights on locomotives, and similar statutes are shown to have added materially both to the capital expenditures by the carriers and to their annual cost of maintenance and operation. A recent law in the state of Texas requires additional men on freight trains, and another statute, referred to as the "thirty-minute act" imposes burdens in the way of extra train service for the failure of carriers to run their passenger trains according to their time schedules within a specified margin of time. We need not, however,

examine these exhibits in detail or refer to other exhibits tending to show an increase in recent years in the cost of supplies and materials and the increased wages paid to railway employees. In the meantime there has been a large increase in tonnage and some increase in efficiency; ton-miles have increased much more rapidly than train and locomotive miles. Gross revenues have increased and doubtless some of the units of cost have decreased. All these matters, however, are finally reflected in the net returns on the investment, available for interest and dividends.

As heretofore stated, the issue made on the pleadings and enlarged upon throughout the record both in the exhibits offered and in the testimony given by various witnesses, expert and otherwise, and again emphasized on the oral argument and on the briefs, was that the returns enjoyed by the defendants on their respective investments were as large as, and in some cases larger than, they should be, and therefore that no increase in rates for the purpose of securing additional revenues was justified. But on their brief and on the oral argument the complainant also insisted that the increased rates are unreasonable irrespective of the question of the adequacy or inadequacy of the returns to the defendants on their several properties. We have already referred to the contention that the increased rates were presumptively unlawful because of the alleged unlawful concert of action or agreement among the carriers resulting in the advances of which complaint is made. It was also contended by the complainant that the advances were made without regard to any consistent or logical system or plan; that those who pay advanced rates were selected to bear the burden of the desired increase only because the carriers were able to agree to advance those particular rates, thus stifling all competition among them with respect to such rates; that those who now pay reduced rates enjoy that benefit under the new schedule only because the defendants were able to agree to reduce those particular rates; and that other rates remained unchanged only because they are controlled by the orders of this Commission or because for some other reasons the carriers could not agree either to raise or to reduce them. All this is urged as showing the unreasonableness of the advanced rates. It is also contended that the advances in rates, made for the purpose of securing additional revenue and thus yielding a better return on the investment, should have been spread more or less over the whole traffic instead of being laid upon a part of the traffic. It will be remembered, as heretofore indicated, that the complainant minimizes the extent of the tonnage of the defendants that was affected by the increased rates, while the defendants endeavor to show that not less than 50 per cent of the total tonnage into Texas was affected by the new schedules.

It is of course manifest that when additional revenues are desired and rates are to be increased for that purpose a horizontal advance in all rates on a fixed percentage, instead of yielding additional revenue, would not improbably result in a reduced revenue. Competitive and commercial conditions have so important a relation to the movement of particular kinds of traffic as to make such a readjustment of a rate schedule inadvisable if not altogether impossible. To increase a rate on a given commodity when it is already as high as competitive and commercial conditions will allow, means that it will cease to move, and such a rate will necessarily result in a loss even of the revenue that has theretofore been enjoyed on that commodity. We do not understand, however, that the complainant contends that the rates ought to have been increased, if further revenues were necessary, on the basis of a fixed percentage applicable throughout the schedule, but contend only that the schedule of August 10, 1908, was adjusted without any underlying logical plan or basis. A careful examination of the record has led us to the contrary conclusion. While many advances were made, many reduced rates were also published in the new schedules, other rates being left unchanged; and we think the testimony fairly shows that the defendants at least thought there was a reason for their action or inaction in each case. It is doubtless true that certain rates were increased for no other reason than that the particular traffic to which they applied could bear a higher rate; and that many reductions were made in the expectation of inducing a heavier movement of particular commodities and in that way of increasing the revenues; and that no change was made in other rates because it was thought that they were already on the right basis and that a change either by way of reduction or increase would not be effective. This explanation was made by several witnesses who participated in preparing the new tariffs, and we do not see how experienced railroad men could or would otherwise approach the question of a general rate revision for increased revenues.

The Santa Fe extends to the Pacific coast and reaches other territory not involved in this proceeding; the Rock Island also has an extensive traffic elsewhere; and one or two other defendants participate largely in transcontinental and other traffic. Counsel for the complainant doubtless had such defendants in mind in stating that these rates affect in some cases only 5 per cent of their total tonnage. It is clear, however, that we must look at the record not from the standpoint of such carriers, but from the standpoint of carriers like the Missouri, Kansas & Texas, the Cotton Belt, and others, whose revenues are derived more particularly from traffic that moves under the schedules in question. Considered from that point of view and assuming that more revenue was required, we do not see that the

tariffs may fairly be criticised because all the rates were not advanced on a fixed percentage, or because the defendants in going over the schedules selected particular commodities that seemed best able to stand a rate advance and others that seemed likely to move more freely under reduced rates and thus produce larger revenues. Certainly in the absence of testimony showing that specific mistakes or blunders were made in the revision, we see no grounds in that course of action for a general condemnation of the whole rate structure now before us.

During the argument none of the important questions discussed in the eastern and western rate advance cases now pending was considered. The amendment to the act casting upon carriers the burden of justifying increases in rates was enacted long after the rates here in question were put in effect, and the construction and interpretation of that provision, argued so earnestly in those cases, may not therefore be appropriately discussed here. Nor did any question arise here, as in those cases, of the right of carriers so to adjust their rates as to yield earnings sufficient to enable them to put back into the property some fixed proportion of the amount paid out in dividends. That question is therefore not considered. Apparently that is a policy that many of the carriers defendant in this proceeding are not in a position to consider from a practical point of view. Since its organization in 1892 no dividend has been paid by the Missouri, Kansas & Texas on its \$63,000,000 of common stock. Only 2 per cent was paid in dividends on its \$13,000,000 of preferred stock in 1906, since which time the dividends on that issue of stock have amounted to 4 per cent. An examination of its accounts shows that since 1903 it has made additions and betterments and otherwise improved the property, and charged the cost either to income or to operation. The amount so expended has been substantial, but the larger part of the expenditure was made at the expense of dividends and during years when no dividends were being paid. The Cotton Belt, which, like the Missouri, Kansas & Texas, earns most of its revenues under the general rate schedules in question, appears not to pay any dividends on its common stock; it paid 2 per cent on its preferred stock in 1909 and 5 per cent in 1910. So far as the Texas lines are concerned the general statement is made that no dividends have been paid in fifteen years except in two instances. Little importance ought, however, to be attached to the question of dividends apart from an accurate understanding of the real value of the investment.

Nor was it contended here that the general rate schedules should be so adjusted as to give the carrier a sufficient surplus of net income to be the basis of credit in the money markets or an assurance to investors of the security of the funds advanced or to be advanced by them for additional construction. The only matter among all the questions of

that nature argued in the eastern and western cases that was brought to our attention in this proceeding was the contention of the complainant that when real estate has been acquired for right of way and for terminals and has been put to that use by a common carrier, it loses to some extent the ordinary attributes of real property and is not to be regarded as increasing in value with the abutting and adjoining property, but remains an earning asset only on the basis of its original cost or on the basis of its value at the time it was actually subjected to the public use. That, it seems, has been the declared policy of the Railroad Commission of Texas. In the first valuations made by it in 1894 the market value of the real estate was ascertained and used; but one of its members when testifying before us in this case said that it was neither the practice nor the policy of his commission, in any subsequent valuation of a road valued by it in 1894, to make any allowance for the increased value of the real estate comprising its right of way and terminals, but to make allowances only for the additions and betterments added to the property since the original valuation. And it was contended here that in considering the value of the respective properties used in the public service by these defendants no allowances should be made for the increment in the value of their real estate. The question is perhaps of as great importance as any other pending problem of public interest, but as we have not found it necessary in disposing of the issues in this case to rest conclusions on either view of the matter, we need not attempt any discussion of it in this report.

After a careful consideration of the whole record, and having in mind the public interest, the interests of shippers, and also the interests more particularly of such of the defendants as draw their revenues largely if not entirely from the rates here involved, we have reached the conclusion, all things being considered, that no grounds have been shown or have been disclosed by our own investigations for making any substantial disturbance in the rate schedules of the defendants that went into effect on August 10, 1908. We do not find that they have so increased the revenues of the defendants as to make them extortionate or to yield earnings that are unduly large, as alleged. We shall not therefore interfere with the commodity rates that were made effective by the defendants on August 10, 1908, it being understood of course that any particular rate or set of rates in those schedules is still open to attack before this Commission on the grounds that are ordinarily assigned in challenging the reasonableness of a rate or rates in effect. But all things considered and in view of the signs now observable of a recovery from the financial disturbances occurring at the close of 1907 and of a return to normal commercial conditions, we should regard the continued main-

tenance of the present class rates as discriminatory and as imposing an unreasonable burden upon the commerce that moves from St. Louis and elsewhere to Texas common points. In our judgment the present rate of \$1.47 on articles of the first class may be retained as a maximum; the present second class rate of \$1.29 for the future should not exceed \$1.25; but the prior rates on all the lower classes should now be restored. We accordingly find that the present scale of class rates is unreasonable and discriminatory and that reasonable class rates for the future ought not to exceed the following:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	147	125	104	96	75	79	70	58	46	39

In adjusting the rates for the future on that scale we have in mind, to some extent, the class rates fixed in *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C. Rep., 555, for the movement of traffic from St. Louis to Denver, as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	162	127	101	80½	63	74	56	50	42	36

The density of the traffic, the physical condition and financial strength of the carriers participating in the traffic from St. Louis to Denver differ materially from the conditions that are characteristic of the traffic from St. Louis to Texas and of the carriers participating in it. Under such circumstances comparisons often lead to unsatisfactory conclusions. Nevertheless, with the full knowledge acquired by the Commission in the case referred to, as well as in other cases, of the conditions that surround the Colorado traffic, we think that to a certain extent the Colorado rates furnish some guide as to what are proper class rates to Texas common points. Making due allowances for all these differences in circumstances and conditions, we think the present class rates to Texas are unreasonable and discriminatory when tested by the class rates to Denver, Pueblo, Trinidad, and other Colorado points, and that any rates for the future to Texas common points in excess of the maximum rates above indicated for the several classes will be unlawful. It must be expressly understood that no reparation will be allowed as the result of the conclusions herein announced.

An order will be entered in conformity with these findings.

20 I. C. C. Rep.

No. 2062.

CINCINNATI & COLUMBUS TRACTION COMPANY

v.

BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY ET AL.

Submitted December 1, 1910. Decided March 14, 1911.

1. A local law under which an electrically operated interurban line has no right to demand a switch connection and interchange of traffic with a steam railway is controlling only in so far as it relates to local traffic; it can not be permitted to operate as an impediment to the movement of interstate traffic after the Congress has legislated upon the subject by requiring such connection and interchange under certain conditions which in this proceeding are shown to exist.
2. The Commission ordinarily will not lend its aid to an effort by one carrier to secure traffic that is reasonably tributary to another line by compelling the latter to join with it in through routes and rates; but the theory as to what traffic is tributary to a particular railroad must not be carried to such an extreme as to impose upon shippers the burden of an unduly long wagon haul.
3. Through routes and through billing denied to points on the complainant's line where it parallels and closely approaches the tracks of one or more of the defendants, but required, on the special facts of the case, in the interest of shippers at other points from five to ten miles distant by the wagon roads.

C. B. Matthews and Harry T. Klein for complainant.

Edward Barton for Baltimore & Ohio Southwestern Railway Company.

R. Walton Moore, Jos. I. Doran, and Theodore W. Reath for Norfolk & Western Railway Company.

Maxwell & Ramsey for Cincinnati, Lebanon & Northern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainant company was organized in 1901 under the laws of the state of Ohio, with charter power to build and operate an electric railroad from Columbus to Cincinnati. The line as actually constructed in 1905 reaches neither of these points, but extends from Norwood, a suburb of Cincinnati, to Hillsboro, a distance of some

53 miles; it lies wholly within the state of Ohio and belongs to the class of roads commonly referred to as interurban roads. It is before us praying for an order requiring the defendants "to establish connections and joint rates for the interchange of interstate traffic."

Besides contesting the issue on the general merits the defendants have interposed one or two objections of a technical nature that must first have consideration:

1. The legal right of the complainant to demand a physical connection with the defendants is questioned. Decisions of the supreme court of Ohio are cited to show that interurban electric railways are classified in that state as street railways, and are controlled by other statutes than those relating to steam railways. With respect to the matter of fences, gates, crossings, clearances, liability to employees, and track elevation, the requirements imposed on electric lines under the local laws are said to differ materially from those imposed on steam roads. The state courts, as we are advised, have definitely held that the laws relating to steam railroads are not to be understood as being applicable to electrically operated roads unless that intention expressly appears. One statute to which special reference is made contains a provision as follows:

Steam railroad companies as between themselves, and interurban and electric railroads as between themselves, shall afford reasonable and proper facilities for interchange of traffic between their respective lines, for forwarding and delivering passengers and property, and shall transfer and deliver without unreasonable delay or discrimination cars, loaded or empty, freight or passenger, destined to a point on its own or connecting lines.

The defendants contend that under this provision the complainant, being an interurban and an electrically operated line, is expressly precluded from demanding a track connection with either of the defendant steam lines and is also precluded from demanding an interchange with them of equipment and traffic. But under the laws of Ohio the complainant seems to be a common carrier of persons and property and is actually engaged in the transportation of both classes of traffic. It also carries express matter. On its line are shippers and towns that desire, in addition to its local service, access to and from interstate points on the public highways operated by the defendants; and in this proceeding we are asked to open these highways to their interstate traffic by requiring the defendants to connect their lines with the line of the complainant and to establish with it through routes and joint rates. Under the act to regulate commerce as amended express power is given us to grant such relief. If therefore the facts and conditions are such as to warrant an order to that effect, we think we need not look beyond that act for any limitation upon our authority to enter it. A local law under which

an electrically operated railway may have no right to demand a switch-track connection and interchange of traffic with a steam railway may be controlling in so far as it relates to traffic moving wholly within the state; but it can not be permitted to operate as an impediment to the movement of interstate traffic after the Congress has legislated upon the subject by specifying the grounds upon which interstate shippers may demand such connections and interchange of traffic. The general principles underlying this conclusion are well understood and have so often been enforced by the courts that the citation of authorities seems not to be required.

2. It is also contended that the proper parties complainant are not before us, and that we are therefore without jurisdiction to order the relief asked. The petitioner made application to the defendants for a switch-track connection and, being refused, instituted this proceeding upon its own complaint. During the pendency of the proceeding the Supreme Court of the United States in *Interstate Commerce Commission v. D., L. & W. R. R. Co.*, 216 U. S., 531, held that section 1 of the act as it then appeared on the statute books not only required the application for a switch-track connection to be made by a shipper, but gave us authority to act only upon complaint by a shipper. To avoid the possibility of having its complaint dismissed on this ground, the petitioner, at a subsequent hearing, filed with the Commission two letters addressed to the complainant, one by a general merchant at Marathon, and the other on behalf of a lumber company of Hillsboro, both being points on the line of the complainant. As they are of similar import, it will suffice to reproduce but one of them here:

MARATHON, OHIO, *March 21, 1910.*

The CINCINNATI & COLUMBUS TRACTION Co.,

Norwood, Ohio.

GENTLEMEN: I beg to advise that your attorney, C. B. Matthews, may use my name as the coplaintiff in your suit before the Interstate Commerce Commission in reference to interchange of freight and cars. In fact, I will do almost anything to help your company in its proceedings in this suit, as it will greatly benefit me and the community at large.

Wishing you success and trusting this will be satisfactory, I remain,

Respectfully, yours,

H. ANDERSON,

General Merchandise Merchant, Marathon, Ohio.

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as having the force and effect of making the two shippers co-complainants in the proceeding. They also contend that no application in writing for a switch-track connection has been made by these shippers to either of the defendants; and that the petition must therefore be dismissed on the authority of the case above cited.

In the general public interest the Commission has endeavored to simplify its practice and procedure and to perform its functions in a practical way, without permitting merely technical matters to interfere unduly with substantial results. In *Missouri & Kansas Shippers Asso. v. M., K. & T. Ry. Co.*, 12 I. C. C. Rep., 483, 484, we said:

While its procedure is to some extent judicial in nature, the Commission is essentially an administrative body; and in the adjustment of contentious proceedings of this kind it ought to examine into the real substance of the matter unembarrassed by considerations that are purely technical.

The letters of these two shippers, in connection with their testimony and their petition to be made co-complainants, seem to us not only sufficient for all practical purposes to bring them before us as co-complainants and to serve as their application in writing for a switch-track connection, but sufficient to give the defendants full notice and to advise the Commission of their interest in the questions at issue. On the other hand, the testimony offered by the defendants seems to cover the entire ground, and in making these objections it is not suggested that any additional testimony is required by the presence on the record of these two shippers as co-complainants or that further testimony is in fact available. There was also abundant opportunity during the months that intervened between the closing of the record and the oral argument to have offered additional testimony. Under such circumstances, to take a technical view of the state of the record would be inconsistent with our general practice of getting at the substance of things when possible; and, inasmuch as the whole situation is fully disclosed and we are in a position to protect the legal and substantial rights of all the parties in interest, we think we may fairly find, as we do, that the necessary parties complainant are before us and that all the requirements of the act, in order to give us jurisdiction of the subject matter, have been observed. Moreover, if the record when closed was defective on these grounds the defect may be held to have been cured by the recent amendment to the act, that became effective before the case was argued and submitted, and which specifically permits complaints of this character to be entertained when filed by the "owner of such lateral branch line of railroad."

Coming now to the merits, the first inquiry is whether a switch connection, using the language of the act, "is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same." On this

point we think the record leaves no room for doubt. A physical connection with the defendant, the Baltimore & Ohio Southwestern, at one time existed at Madeira and also at a point spoken of in the record as Hillsboro Junction. At the same time there was also a connection with the line of the Norfolk & Western at the latter point. They were put in when the line of the complainant was under construction, and were removed after its completion, apparently in accordance with a previous understanding to that effect. It is not to be doubted that it is reasonably practicable to restore these connections at those points or to put connections in elsewhere, or that when restored or put in elsewhere they can be operated with safety. Nor can it be doubted that there will be sufficient traffic to and from points on the line of the complainant reasonably to compensate the defendants for constructing, maintaining, and operating such switch connections with the complainant.

The complainant also demands, as we understand the petition, through routes and joint rates to and from all interstate points reached by the defendant lines and their connections. When the complaint was filed the Commission, under section 15, had authority, after hearing on a complaint, to establish through routes and maximum joint rates and to prescribe the divisions thereof, "provided no reasonable or satisfactory through route" existed. In the amendment of June 18, 1910, this limitation was omitted. As the section now reads, the only limitations on our authority to establish through routes and joint rates that need be mentioned here are: (a) We may not require any railroad involuntarily to embrace in a through route substantially less than the entire length of its road between the *termini* of the proposed through route. (b) We may not establish through routes and joint rates between a steam railroad and a street electric passenger railway that does not transport freight in addition to its passenger and express business. The first of these limitations must, of course, be observed in all cases; the second has no application in connection with this complaint.

This is the first occasion upon formal complaint that we have had to examine the amended provision. But one point that seems to be entirely clear is that, although the complaint was filed before the amendment became effective, we can act only under the authority that we now have. We gather also from a careful reading of the amended clause that it was the purpose of the Congress to widen the scope of our powers to establish through routes and joint rates rather than to narrow them, and to leave in the Commission full discretion to act in such cases in the light of all the facts and circumstances and according to what may seem wise, fair, reasonable and equitable in each case. We shall dispose of this complaint with that understanding of the extent of our authority.

For a distance of about six miles eastwardly from Norwood the line of the complainant not only parallels the line of the Baltimore & Ohio Southwestern but practically adjoins the right of way of that defendant. A few miles farther to the east it approaches and at Perintown practically adjoins the right of way of the Norfolk & Western and parallels that road for a few miles to Stonelick, at which point it is only about a mile distant from the Norfolk & Western. Its station at Norwood also immediately adjoins the stations of the defendants, the Baltimore & Ohio Southwestern and the Cincinnati, Lebanon & Northern Railway Company. For a distance of some four or five miles out of Hillsboro, its eastern terminus, the complainant's line again parallels the tracks of the Baltimore & Ohio Southwestern, the rights of way of the two lines being immediately adjoining. It was at a point about a mile and a quarter west of Hillsboro that the line of the complainant was formerly connected by a switch track with the line of the Baltimore & Ohio Southwestern and also with the line of the Norfolk & Western. On that end of the line are the villages of Hoagland, Fairview, and Allensburgh, which are, respectively, a mile and a half, one mile, and three miles distant from a station on the line of the Baltimore & Ohio Southwestern, but much more distant from any station on the Norfolk & Western. They are small communities with no commercial enterprises of such character that they may be said not to be reasonably well served at this time, so far as interstate shipments are concerned, by the Baltimore & Ohio Southwestern. Among all the witnesses that testified none resided at any of these places, and therefore the record discloses no complaint of inadequate transportation facilities at these points or the need of additional facilities. At the western end of the line are Madisonville, Madeira, Milford, Perintown, Stonelick, and Boston, some of which are practically within a stone throw either of the Baltimore & Ohio Southwestern or the Norfolk & Western. Boston, the most distant of the points last mentioned, is about five miles by the country roads from Batavia and something less from Baldwin, stations on the Norfolk & Western; it is not less than eight miles from the nearest station on the tracks of the Baltimore & Ohio Southwestern. Dodsonville, toward the eastern end of the complainant's line, is also four or five miles distant by wagon road from any station on the Baltimore & Ohio Southwestern and as much as eight miles from the nearest station on the Norfolk & Western. Between that point on the east and Boston on the west are a number of towns and villages that are located from about five miles to as much as ten or twelve miles by wagon road from the nearest stations on the lines of one or the other of the defendants.

Under the principles announced in *Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co.*, 13 I. C. C. Rep., 20, we would not open through routes and establish joint rates for Norwood or Hillsboro

because both places now reach all interstate points over each of the defendant lines. Moreover, through routes and joint rates between interstate points and Norwood and Hillsboro, in connection with the complainant's line, could not lawfully be required under the terms of section 15 of the act as lately amended. Nor should we open through routes and establish joint rates between interstate points and Madisonville, Madeira, or Hoagland over the complainant's line in connection with the Baltimore & Ohio Southwestern, because those points are already served by the latter line. Nor should we under the views announced in that case open through routes and joint rates to and from Fairview, Allensburgh, Milford, Perintown, and Stonelick, all those points being within a short and reasonably convenient distance of stations on one or the other of the defendant lines. On the other hand, under the disposition made of a similar complaint in *Cedar Rapids & Iowa City Ry. & Light Co. v. C. & N. W. Ry. Co.*, 13 I. C. C. Rep., 250, we are of the opinion that the defendants may properly be required to join with the complainant in opening through routes and establishing joint rates between interstate points and Boston, Monterey, Hartman, Marathon, Quinns Crossing, Vera Cruz, Fayetteville, St. Martins, Stringtown, and Dodsonville. None of these towns is within less than approximately five miles, and two or three are ten miles or more by the country roads from any station on the defendant lines. To say that such places are already reasonably well served by either of the defendants is to announce the definite proposition that a wagon haul of from five to ten miles is not an improper burden to put upon an interstate shipper. But in such a view we are not ready to concur as a fixed rule, even when the country roads are so good as the roads in this territory are said to be. While we have little sympathy with, and will not ordinarily lend our aid to, an effort by one road to secure traffic that is reasonably tributary to another road by compelling the latter to join with it in through routes and rates, we shall not permit the theory as to what traffic is tributary to a road to be pushed to such an extreme as to impose an undue burden upon shippers. Confining our ruling to the special facts of the case and to the points last mentioned, we think the prayer for through routes should be granted.

But besides contending that the country traversed by the line of the complainant has been adequately served by one defendant for not less than 50 years and by the other for not less than 25 years, the defendants also assert that the combined traffic to and from this territory is very light, and that the little revenue received from it ought not to be taken from them by a line that should never have been built; that, considering the transportation requirements of this district and the facilities offered by the defendants, the complainant's line is one that would not have been allowed to be constructed under a

system of laws, prevailing in some of the states, that requires previous official sanction when a railroad enterprise is proposed and a line laid out; and that "one of the questions involved is whether the owners of a line of railway thus unwisely projected and built can demand a division with the older lines at their expense and without any compensating advantage to the community in general traversed by the several lines." In this connection the defendants state that no dividends have ever been paid on the outstanding stock of the complainant company; that its line is operated at a heavy annual deficit; and that it is not earning even operating expenses, but is approaching bankruptcy. Figures are also given purporting to show that the freight rates on the lines of the defendant railroads to the territory in this vicinity produce "not more than 1.3 per cent profit on the investment." Excluding Hillsboro and Greenfield, the general district has lost both in wealth and population since 1860. It is said, generally speaking, to be an infertile and very poor farming country, not producing enough grain and feed to supply the local demand. And most of the lumber, it seems, has been cleared off.

The defendants object to through routes and joint rates with the complainant on still other grounds. It is insisted that its right of way is unfit for the operation of such trains as are used on the regular lines. Referring to the matter of ballast, the line of the complainant is said to be a "one coat" road and without any ballast in some places, while in others the fills have been much washed. We are also told that the bridges in some cases have no sufficient margin of safety and are largely made from material discarded by the regular lines as second-hand stuff, to be sold and not used; that the trestles are subject to the same general criticism; that the grades are steep and the curves sharp; that while operation is possible it is thought to be dangerous; that such freight cars as the complainant has were purchased of the Cincinnati, Hamilton & Dayton from among those condemned as no longer fit for use on that line; and that if put upon either of the defendant lines would be "crushed like eggshells." Finally it is said that the clearances on the complainant line are not such as are required by the local law of steam roads although regular line equipment can get through; that for five miles the line runs on public streets; and that at Madisonville there are two curves so sharp that freight cars with standard couplers can not make the turn, shackle bars being required. The right of way is from 20 to 60 feet wide, and at no place on complainant's line are there track scales. It has 9 box cars, 2 flat cars, 4 gondolas, and 1 stock car, and is therefore not in a position to exchange any equipment with the defendants or to furnish any equipment for joint use.

We think that much of this criticism as to the physical condition of the line of the complainant is the reflection of a special view in

which the requirements of steam lines with respect to their roadbed and bridges were taken as a basis of comparison. Giving due weight to the testimony of witnesses on each side of the controversy, but basing our conclusions more largely upon our own investigations, we think the complainant will have no difficulty in moving regular line equipment over its road. We do not understand that it is equipped for operating long freight trains. But whatever may be the facts with respect to all the details of that nature referred to in the record, we assume that the self-interest of the complainant will be sufficient to lead it to make the necessary arrangements so to conduct its operations as to be able to move traffic over its line with safety. This we think it can do, and this we doubt not it will do. We attach no importance therefore to the suggestion that the cars of the defendants will not be safe on the line of the complainant, or to the suggestion that if an order is entered requiring the defendants to join in through routes and through rates with the complainant an undue burden will be placed upon them under the so-called Carmack amendment to the act, because of the condition of the complainant's roadbed and bridges.

In conclusion we find that the complainant is entitled to a switch connection with the line of the defendant, the Baltimore & Ohio Southwestern Railroad Company, at Madeira, and to a switch connection at or near Hillsboro with the line of that defendant as well as with the line of the Norfolk & Western Railway Company. We shall not here specify the exact points at which the connections are to be made. In case, however, the parties can not promptly reach an agreement on that matter an order will be entered. We also find on the special facts of the case, as heretofore explained, that the record justifies an order requiring the defendants to join with the complainant in establishing through routes so that shippers on the line of the complainant at points between and including Boston on the west and Dodsonville on the east may have access to and from interstate points under through billing and through charges. The suggestion made on the brief of the complainant is that the joint rates, when established, ought not to be greater than the "maximum consisting of the present tariffs to Hillsboro and Madeira, respectively, and the carload rates upon the complainant's line." Certainly this demand, as we understand it, is within reason from every point of view. We agree, however, with the defendants in saying that the case does not seem to justify putting them at the expense of reprinting their tariffs and getting the concurrence of their connections in new joint through rates to and from local points on the complainant's line. This may be avoided if the complainant will file its local rates with this Commission. This will make them applicable under our rules on through interstate movements.

As the complaint seems to have been abandoned by the petitioner so far as the Cincinnati, Lebanon & Northern Railway Company is concerned, we have not considered that line in reaching the conclusions herein expressed.

On the assumption that the parties will have no difficulty in carrying these findings into effect by agreement among themselves we shall enter no order at this time. Upon being advised of their failure to agree the necessary order will be entered.

20 I. C. C. Rep.

No. 2783.

HARTMAN FURNITURE & CARPET COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
ET AL.

Submitted October 17, 1910. Decided February 14, 1911.

Through rate of 49 cents per 100 pounds exacted on shipment of chairs from Malvern, Ark., via Thebes, Ill., to Milwaukee, Wis., found unjust in so far as it exceeded 39 cents. Reparation awarded.

Lawrence Oster for complainant.

W. F. Dickinson and *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company.

Fred H. Wood for Chicago & Eastern Illinois Railroad Company and St. Louis & San Francisco Railroad Company.

F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Chairman*:

This complaint, filed August 18, 1909, attacks as unjust and unreasonable defendants' charge of \$101.43, based on a through carload rate of 49 cents per 100 pounds, applied to one carload of chairs, weighing 20,700 pounds, shipped on March 25, 1908, from Malvern, Ark., to Milwaukee, Wis. It alleges that the sum of the intermediate rates contemporaneously in effect between Malvern and Milwaukee, via Cairo, Ill., was 39 cents per 100 pounds, made up of 21 cents from Malvern to Cairo, and 18 cents thence to Milwaukee; that, effective May 28, 1908, the sum of these intermediates was made the through rate; that the charges on this shipment, based upon the sum of the intermediates, would have been \$80.75. It asks reparation in the sum of the difference.

Defendant Chicago, Milwaukee & St. Paul admits that the through charge exceeded the sum of the intermediate rates, and that the 49-cent rate was subsequently reduced to 39 cents, but denies that the charges assessed, based upon the only lawful rate applicable at the time of shipment, were unreasonable or unjust. The other defendants deny that the shipment moved over a route the sum of the

intermediates via which was less than the through rate, and allege that on the contrary it moved via Thebes, Ill., and the local rate from Malvern to Thebes was 36 cents, and thence to Milwaukee 18 cents, or a total of 54 cents.

We find that the shipment moved via Thebes at the said through rate of 49 cents; that the sum of the intermediates via Thebes was 54 cents, as above stated. We find also that while the sum of the intermediates via Cairo was 39 cents, made up as follows: Malvern to Cairo, 21 cents, minimum 20,000 pounds, and Cairo to Milwaukee, 18 cents, minimum 22,720 pounds, the through rate of 49 cents applied via Cairo as well as via Thebes, and that on May 28, 1908, the 39-cent rate was established between these points, via both Cairo and Thebes, and this rate remained in effect until October 15, 1909, when it was advanced.

It is the finding and conclusion of the Commission that the rate of 49 cents exacted on this shipment, under all the facts, circumstances, and conditions existing at that time, was unjust in so far as the same exceeded 39 cents per 100 pounds. Therefore we award reparation to the complainant to be paid by defendants in the sum of \$17.06, with interest from April 1, 1908. Inasmuch as the 39-cent rate, put into effect over both routes subsequent to the movement of this shipment, as above stated, remained in effect for more than a year, we will not enter the usual order controlling the rate for the future.

An order will be entered accordingly.

20 I. C. C. Rep.

No. 2917.
MILLINERY JOBBERS ASSOCIATION
v.
AMERICAN EXPRESS COMPANY ET AL.

Submitted April 7, 1910. Decided February 13, 1911.

1. As damage claims increase the expense of carriage and thus affect the rates, it is reasonable and to the interest of the general shipping public as well as of the carriers to discourage shipping methods and the use of shipping cases that are lacking in safety. On these grounds and upon the facts disclosed by the record; *Held*, That the classification rule of the defendants applying minimum weights on shipments of merchandise, and more particularly millinery, packed in ordinary pasteboard or strawboard boxes, is not unreasonable; nor is the rule unreasonable that provides for the refusal of such shipments when not crated.
2. The classification rule of the defendants applying minimum weights on shipments in corrugated paper or pulp cartons of certain sizes, when uncrated, instead of assessing the charges on the basis of their actual weights, found unreasonable.
3. The needless complexity of rules in the general classifications of express companies commented upon.

Cassoday & Butler for complainants.

Charles W. Stockton and *Harry S. Marx* for defendants.

T. B. Harrison, jr., for American Express Company, National Express Company, and Adams Express Company.

Alexander & Green for Wells Fargo & Company.

O'Brien, Boardman, Platt & Littleton, *George W. Field* and *William W. Collin, jr.*, for United States Express Company.

Stewart & Shearer for Southern Express Company.

J. L. Minnis for Pacific Express Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The rules and regulations complained of here affect the charges of the defendants on all light and bulky shipments of what is referred to in express tariffs as general merchandise matter. In this proceeding, however, we are concerned only with their effect upon the millinery traffic. The rules now before us in a revised form were made effective on August 1, 1909, but some of them were put in force as long ago as

May, 1906. Stated briefly, their purpose was to provide minimum weights on light and bulky merchandise when shipped in pulp or corrugated paper cartons, exceeding certain dimensions, or when shipped in strawboard or pasteboard boxes and inclosed in crates, exceeding certain dimensions. The rules also provide for the refusal of such shipments when in containers of that character exceeding certain other dimensions. The complaint made is that the rules and regulations are unreasonable and result in discriminatory and excessive transportation charges.

It may be inferred from the record that while styles in millinery rapidly change the greater part of such traffic is substantially the same now in general character and bulk as it was 30 years ago. In recent years, however, new methods of packing their shipments have gradually been adopted by the wholesale milliners. The increasing cost of lumber, as the record seems to indicate, has led the box makers to furnish to the trade wooden shipping cases and crates that are less substantially made than formerly. Moreover, instead of using wooden boxes the jobbers of millinery in recent years have resorted to the practice of using wooden crates, more or less flimsy and unsatisfactory in character, to inclose and protect the thin pasteboard boxes in which they pack feathers, ribbons, and other diversified materials used by retail millinery establishments. The record shows that as a result of these methods of packing their shipments the defendants have been subjected to a serious increase in the claims made against them for damages occasioned by the loss or injury of the merchandise in transit. The use of such packing materials has also had the effect of appreciably reducing the revenues of the defendants because of the reduction in the average weight of millinery shipments when made in the lighter containers.

During the year 1896 the wholesale shippers of millinery goods commenced to use what are known as pulp or corrugated paper cartons, in contradistinction to what are commonly known as pasteboard or strawboard boxes. Corrugated cartons, as we here use the phrase for convenience, are built up of heavy layers of pasteboard between which corrugated paper is inserted to add strength and thickness and thus increase their ability to withstand contact and blows when in transit. Such cartons are shown by the record to make a reasonably substantial and convenient packing box, and as the defendants concede, are regarded with favor by carriers quite generally. From the standpoint of the shipper they have several advantages. Their cost is not great; the supply for the season can be stored in a comparatively small space; they come ready for use and can be cut down if too large; they can be handled more conveniently than wooden boxes; and their lighter weight means economy in transportation charges.

For many years millinery has been accepted by express companies at regular merchandise rates on the actual weight of the shipments, regardless of the bulk of the packages. In that respect such traffic has been on an equal footing with other merchandise. But during 1906 the defendants in their general classification published rules providing for the application of minimum weights on shipments packed in pulp or corrugated paper cartons, exceeding certain specified dimensions, unless also crated or boxed. In the latter event the rules provided for the assessment of charges on the basis of the actual weight. No minimum weights were fixed for shipments in wooden cases or boxes. In these rules the defendants also took measures to stop the practice of shipping what are referred to in the record as "balloon packages," a phrase used by the defendants as descriptive of pasteboard boxes and pulp cartons of light weight but of extreme size. This result was accomplished by rules forbidding the acceptance of ordinary pasteboard or strawboard boxes, not crated, and exceeding 50 inches in exterior dimensions and of corrugated paper cartons uncrated and exceeding 90 inches. Boxes and cartons of greater magnitude than these are admittedly not safe containers when uncrated. The rules of 1906 also fixed 110 inches as a limit in the size of boxes and cartons that would be accepted even when crated. It may be well here to explain that a carton or box of a stated number of inches means a box the exterior length, width, and depth of which aggregate that number of inches.

Before the rules of 1906 were adopted the jobbers in millinery had always used wooden boxes or heavy crates for shipping feathers, hats, and other like materials; they had also indicated to the defendant carriers that it would not be practicable to crate such merchandise. Nevertheless, shortly after the rules had been promulgated, they began, as heretofore stated, to ship materials of that light and bulky character in thin pasteboard boxes with no better protection than that afforded by light wooden crates. In that form the shipments were billed, under the rules and tariffs then in effect, at their actual weight. The milliners were thus able to avoid the higher minimum weights that would have been applicable had the merchandise been packed in substantial corrugated cartons without crates. In other words, by substituting a light wooden crate inclosing a number of thin pasteboard boxes for the more secure and convenient cartons formerly used without crates, the shippers were able to avoid charges based on the minimum weights prescribed for uncrated cartons, and at the same time the express companies were put in a position of carrying the shipments at actual weight and in an insecure and inconvenient container.

It was to meet this change in the methods adopted by the jobbers for packing their goods that the rules were revised and made effective as heretofore stated on August 1, 1909. The minimum weights applicable under the rules of 1906 on shipments in pulp and corrugated paper cartons were republished, and the same minimum weights were also established for shipments packed in ordinary strawboard or pasteboard boxes when inclosed in crates. The rules as thus modified in 1909 are the real occasion of this complaint. As published they seem to be somewhat obscure and more complicated than is reasonably necessary. As we understand them the minimum weights as then revised and now in effect are as follows:

Exterior dimensions.	Ordinary strawboard or paper boxes.		In corrugated paper or pulp cartons.	
	Crated.	Not crated.	Crated	Not crated.
Not over 50 inches	Actual weight..	Actual weight..	Actual weight..	Actual weight.
Over 50, not over 70 inches....	.....do	Refused .....	.....do	Do.
Over 70, not over 75 inches....	30 pounds .....	.....do .....	.....do	30 pounds.
Over 75, not over 80 inches....	40 pounds .....	.....do .....	.....do	40 pounds.
Over 80, not over 90 inches....	50 pounds .....	.....do .....	.....do	50 pounds.
Over 90, not over 100 inches...	60 pounds .....	.....do .....	.....do	Refused.
Over 100, not over 110 inches..	70 pounds .....	.....do .....	.....do	Do.
Over 110 inches	Refused .....	.....do	Refused	Do.

It will be observed from this table that corrugated cartons when crated are refused if larger than 110 inches in exterior dimensions, and are refused when uncrated if over 90 inches; and that strawboard or pasteboard boxes are refused when in excess of 50 inches if uncrated or over 110 inches when crated. It will be noted that the actual weight controls the charges on pasteboard boxes of less than 50 inches and on corrugated cartons of less than 70 inches in exterior measurement, while minimum weights are applicable on containers exceeding those sizes. These minimum weights in the ordinary and usual experience of millinery jobbers seem to exceed the actual weight of shipments in containers of the sizes specified. But the jobbers seem to agree in the opinion that crates and wooden boxes involve an expense that more than absorbs the difference in charges based on the assigned minimum weights and charges based on the actual weights of shipments in crates and wooden boxes. The result therefore of the adjustment of 1909 is that it costs less to pay the prescribed minimum weights on uncrated cartons of light and bulky articles than to crate such cartons or to use wooden boxes.

The record seems to show that shipments in the ordinary pasteboard and strawboard boxes are peculiarly liable to injury and damage in transit. In fact, the testimony offered by the defendants indicating the risk involved in the carriage of millinery traffic, relates

chiefly, if not wholly, to shipments in pasteboard or strawboard boxes. And we see no grounds in this record that would justify us in requiring the defendants to change their rules with respect to such shipments; there are indeed some grounds upon which such shipments might reasonably be refused when offered in containers of that character. But without discussing that view we are of the opinion that the rule of the defendants applying minimum weights to such shipments is not unreasonable. As damage claims increase the expense of carriage and thus affect the rates, we think it altogether reasonable, in the interest of the general shipping public as well as in the interest of the carriers themselves, to discourage in that way the use of shipping methods and shipping cases that are lacking in safety.

We take a different view, however, of the present rules and regulations of the carriers with respect to corrugated paper or pulp cartons. That such a carton is an excellent container for ordinary shipments of merchandise without the protection of a crate, seems to be admitted by the defendants. Their usefulness and general safety for shipments by freight have been recognized also in the classifications of railroad companies. Although the point is contested by the defendants, we are satisfied upon the record that cartons of the size limited by the rules of 1909 are not improved either in point of safety or of convenience in handling by being inclosed in wooden crates. When uncrated they are more easily stacked in the car than are crated shipments, generally speaking. They will also stand up under a considerable weight of other shipments. While that does not appear to have been the object of the amended rules, nevertheless, so far as this record, after a most careful study of the testimony, gives us any information of affirmative value on the point, the only substantial advantage accruing to the express companies under the rule that requires the crating of cartons in order to secure the benefit of rates on their actual weight, is that the crates add to the weight and thus afford some slight additional revenue to the carrier. According due significance to all that is said of record on the point, the testimony seems clearly to demonstrate the reasonable safety of shipments in such containers, when within the size limited in the classification, as well as their ability to stand the ordinary and usual handling while in transit. Their use so far as the record gives us any indication is not attended by an increase either in the number or extent of damage claims against the defendants. As heretofore indicated, the matter of damages for the loss of or injury to property in transit is an element that enters into the cost of operation and is therefore justly reflected in the general rate structures. For this reason there is a certain public interest involved in the proposition

that carriers may properly insist upon, and indeed ought to require, the use of substantial and adequate boxes, cartons, and other packing materials for property offered for transportation. But corrugated paper or pulp cartons, when uncrated and within the size limited by the rules of these defendants, seem adequately and reasonably to meet these requirements for shipments by express. They have, in fact, one advantage of more or less importance in that they protect their contents from the effect of water even better than the ordinary wooden box.

Another phase of the complaint relates to the rules of the defendants respecting the aggregation of packages. These rules relate to shipments of two or more packages made on the same date by one consignor to a single consignee; they were incidentally modified in connection with the establishment of the minimum weights hereinbefore considered. But the conclusions that we have arrived at dispose of that part of the complaint so far as we think the complainants are entitled to relief. The record also involves many instances of alleged discrimination resulting from the application of the so-called table of graduated weights. That question, however, is involved in other proceedings before us of much wider scope, and we shall not therefore deal with it here.

Upon a careful examination of this voluminous and carefully prepared record we are brought to the conclusion that the rules and regulations of the defendants are unreasonable so far as they apply minimum weights on corrugated paper or pulp cartons when uncrated, instead of assessing the charges on the basis of their actual weight. The effect of those regulations is the assessment of charges for the transportation of such shipments which we find to be unreasonable, and in our opinion such shipments ought to be carried at the merchandise rates as applied to their actual weights.

An order will be entered in conformity with these conclusions.

20 I. C. C. Rep.

No. 3575.

BOARD OF TRADE OF THE CITY OF CHICAGO

v.

ATLANTIC CITY RAILROAD COMPANY ET AL.

No. 3319.

NEW YORK PRODUCE EXCHANGE

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY ET AL.

Submitted March 18, 1911. Decided April 4, 1911.

Complaints herein attack what are known as ex-lake rates on grain from Buffalo to eastern points; in No. 3575 the complaint is directed against both domestic and export rates, while in No. 3319 export rates alone are involved; upon the facts disclosed by the record, and for the reasons given in the report, both the complaints are dismissed.

Chester Arthur Legg and W. M. Hopkins for Chicago Board of Trade, complainant.

Baldwin, Wadhams, Bacon & Fisher for New York Produce Exchange, complainant.

Arthur George Brown and John B. Daish for Baltimore Chamber of Commerce, intervener.

George A. Schroeder for Milwaukee Chamber of Commerce, intervener.

George H. Evans for Indianapolis Board of Trade, intervener.

M. F. Doyle for Cleveland Grain Company, intervener.

T. A. Grier for Peoria Board of Trade, intervener.

L. Richards for Quaker Oats Company, intervener.

J. L. Seager, Edgar H. Boles, H. A. Taylor, O. E. Butterfield, and Clyde Brown for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and others.

Ernest S. Ballard for New York Central Lines.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

Both the above complainants attack what are known as ex-lake rates upon grain from Buffalo to eastern points. In No. 3575 the complaint is directed against both domestic and export rates, while in No. 3319 export rates alone are involved. The two cases were heard together and may be disposed of in a single report.

DOMESTIC RATES.

Grain can move from the western field of production to the eastern point of consumption either by some all-rail route or by what is known as the rail-and-water route. In the latter case it is carried from the point of production to some port upon the Great Lakes, like Chicago or Duluth, by rail, is taken from the western lake port by water to some eastern lake port, of which Buffalo is the principal one, and is thence transported by rail to destination. When grain takes the all-rail route it may pass through Chicago or it may reach its eastern destination without entering that market. If it takes the rail-and-water route, it must move through some lake port, of which Chicago is the largest. It is therefore for the advantage of Chicago that such rates should be maintained as will permit grain to move by the water route. The board of trade of that city, which is an organization having in charge the grain interests of that community, insists that rates are now so constructed as to divert traffic from the water route to the all-rail route and that this results in undue prejudice against that locality.

The position of the complainant will be best understood by an illustration drawn from the rates now in effect. The rate on wheat from Chicago to Boston is, at the present time, 18 cents per 100 pounds. If this grain moves by the New York Central lines it would pass through the city of Buffalo en route and would be transported from Buffalo to Boston by the New York Central & Hudson River Railroad. For this service that carrier would receive, under the present adjustment of rates, 7.9 cents per 100 pounds, that being its division of the joint through rate after all allowances have been made for terminal expenses, etc. This figure is taken from the brief of the complainant and is sufficiently accurate for the purpose of illustration.

By ex-lake rates are meant those rates which apply upon grain reaching Buffalo from the west by water. The present ex-lake rate on wheat from Buffalo to Boston is 13.3 cents per 100 pounds. This ex-lake rate includes elevation; that is, the taking of the grain from the ship into the elevator and again loading it from the elevator into the car, for which the charge is one-half cent per bushel, or, in case of wheat, 0.83 of 1 cent per 100 pounds. When this absorption is deducted from the ex-lake charge the carrier received

for handling the grain from Buffalo to Boston about 12.5 cents per 100 pounds. The cost of transporting to Boston the wheat which has reached Buffalo by lake is to every practical intent the same as that of transporting the wheat which has come to Buffalo by rail, and the complainant insists that when the New York Central charges for handling the ex-lake wheat 12.5 cents, while it handles the all-rail grain for 7.9 cents, it is guilty of an unjust discrimination against the lake grain, and therefore against the city of Chicago, which is interested in moving the grain by water.

The defendants reply that their ex-lake rate from Buffalo to Boston is reasonable; that the rate from Chicago to Boston is competitive, and that the division which they are willing to accept from Buffalo to Boston as the price of engaging in this competitive business ought not to be used as the standard by which to measure the reasonableness of their ex-lake rate from Buffalo. In passing upon the validity of this defense we may first inquire whether the ex-lake rate to Boston is reasonable in and of itself.

The present domestic ex-lake rate from Buffalo to Boston is 8 cents per bushel, equivalent to 13.3 cents per 100 pounds; from Buffalo to New York 6.5 cents per bushel, or 10.8 cents per 100 pounds. These rates apply not only to terminal points, but to interior destinations, which ordinarily take the port rate.

The movement from Buffalo upon the domestic rate is to some extent in large quantities to terminal points, but there is also an extensive distributing movement under which grain moves from Buffalo in single carload lots to the point of consumption. The ton-mile revenue produced runs from 5 mills to 6.5 mills. The cost of moving this ex-lake grain is the same as the cost of moving local grain originating or received at Buffalo except that in case of business from the Lakes the carrier absorbs, as a part of its rate, the elevation charge of one-half cent per bushel, and therefore, in effect, performs this service in addition to its transportation. If the reasonableness of this rate is to be determined by the cost to the carrier, there is no reason why the ex-lake rate should be lower than the local rate. In the *Banner Milling case*, 19 I. C. C. Rep., 128, to which reference is subsequently made in this report, we considered the rate upon flour from Buffalo to Boston and New York and finally reached the conclusion that a rate of 13 cents to Boston would not be excessive. Ordinarily the same rate applies to the movement of wheat and flour, and if we are to adhere to this rule and to our decision in the *Banner Milling case*, we must hold that, while domestic ex-lake rates are liberal, they are not so high as to be pronounced unreasonable.

This wheat moves from Chicago to Buffalo largely by tramp steamer, and the rate under which it moves is subject to the most active competition. While many attempts have been made to control this com-

petition, they have never succeeded, and the resulting rate was during the season of 1910 perhaps lower than for any previous season. It was said that wheat had moved for about 1.25 cents per bushel. It will be seen therefore that the resulting through rate from Chicago to Boston by lake and rail is a reasonable one, and, furthermore, that it is materially lower than the all-rail rate.

It also appeared that this avenue of transportation is available under the present rates, and that very large quantities of grain seek that avenue at the present time.

It should be noted in this connection that the thing in which the public is primarily interested is the price of the transportation. It is for the interest of the consumer and the producer that the cost of carriage should be reasonable; it is not of much importance by what route the traffic is handled, unless the effect of the rate adjustment is such as to deprive the public of proper facilities or to shut up the water avenue and thereby perpetuate unreasonable rates by rail. While, however, it is of no special concern to the general public whether this grain moves through Chicago or through some interior market like Peoria, it is the right of each market to insist upon an adjustment of rates which is, upon the whole, just to it. The Chicago Board of Trade did not in the present case urge that the ex-lake rate was unreasonable, but it did insist that the adjustment of rates was unduly discriminatory against that market. Its claim was that the ex-lake rate from Buffalo was a part of a through transportation from Chicago, and that the line east of Buffalo had no right to impose upon that through traffic which came by water a higher rate than was imposed upon similar traffic which came to Buffalo by rail; and this is the real question which we are called upon to decide in passing upon the domestic rate.

It is well understood that rates on grain and grain products from Chicago to the various Atlantic ports from Norfolk north are competitive, and that whenever the rate to any one of these ports is fixed that to all the others must be and always is correspondingly adjusted. Grain can be transported from Chicago to New York City via the Great Lakes to Buffalo and from thence via the Erie Canal and the Hudson River. This route originally fixed the grain rate from Chicago to the seaboard, and while in recent years the competitive influence of the Erie Canal has to a considerable extent disappeared the existence of that waterway still produces a profound effect upon grain rates. It will not be challenged, certainly not by the gentleman who so forcibly presented the case of the Chicago Board of Trade, that all grain rates from Chicago to Atlantic-seaboard territory, including Boston, are highly competitive.

The New York Central & Hudson River Railroad begins at Buffalo and first receives grain coming from Chicago at that point, but it is

part of a through route operated by the New York Central system, which handles the grain all the way from Chicago to Boston. If the grain moves by rail, this system has the entire haul from Chicago, while if it moves by lake to Buffalo and by rail from Buffalo, it only enjoys the haul from Buffalo to destination. It may therefore be for the interest of this company to make such rate from Chicago as will move the traffic by rail, although that portion of the line from Buffalo to Boston receives less earnings than as though the grain were taken up for the first time at Buffalo.

But what is even more significant is the fact that the New York Central system from Chicago through Buffalo to Boston must handle this business upon a rate made by some line from Chicago to the seaboard which does not serve Buffalo, or at least which can not handle grain from Buffalo to advantage by rail. This line obtains no part of the traffic which goes by the Great Lakes to Buffalo, and must make a rate in competition with the lake-and-rail rate in order to obtain a part of that traffic. A road like the Delaware, Lackawanna & Western, which is not financially interested in any railroad operating between Chicago and Buffalo, and to which it is therefore a matter of indifference whether it receives the grain at Buffalo from a water or a rail connection, is nevertheless compelled to join with some rail line west of Buffalo in making this through rate and to receive as its division a less sum than the local rate from Buffalo as the only condition upon which it can indulge in through-rail business from Chicago. It seems plain that the all-rail rate from Chicago east competes with the lake-and-rail rate, and that therefore the division of the line east of Buffalo can not be made the standard by which to fix a reasonable rate from Buffalo.

If the rate to Buffalo were reduced the effect would be to make the cost of transportation via the lake-and-rail route less than at present, which must lead to a corresponding reduction of the all-rail rate, provided the rail carriers are to compete for that business; but this would in no respect benefit the city of Chicago, and it is exactly this thing against which that market protests. The claim advanced by the traffic manager of the Board of Trade of Chicago in a great variety of forms was that the rail line east of Buffalo should charge the same for the further transportation of lake grain as for rail grain, the cost of the service being the same. Manifestly, this can not be so unless rail carriers from Chicago are to withdraw from this competition or unless the lines west of Buffalo will sustain the entire shrinkage, giving to their connections east of Buffalo a division equivalent to the local from that junction point.

This Commission has uniformly held that the division of a through rate was not a matter of concern to the public, and that while it might be looked to for certain purposes it should not ordinarily be made the

standard of reasonableness or the measure of discrimination. The total rate is the thing of consequence, not the manner in which that charge may be shared among the different parties to it; and this could hardly be better illustrated than by the present instance. If lines west of Buffalo were to make the entire shrinkage, allowing to lines east of Buffalo divisions equivalent to the local from Buffalo, this ground of complaint would be removed, but the complainant would be in no respect benefited. The true inquiry is whether, upon the whole, there be an unjust discrimination, and we are hardly prepared to find that such a discrimination does of necessity arise out of the fact that these all-rail carriers insist upon meeting the lake-and-rail rate.

The complainant refers, in support of his contention that the ex-lake rate from Buffalo ought not to exceed the earnings of the rail line beyond Buffalo, to *Bigbee & Warrior Rivers Packet Co. v. M. & O. R. R. Co.*, 60 Fed. Rep., 545.

The defendant in that case had a published rate of 80 cents per compressed bale for the movement of cotton from Mobile to New Orleans, and the relator presented 400 bales of cotton for shipment at that rate. The defendant declined to receive it for less than \$1.25 per bale, stating as a reason that the relator was a water carrier which had brought this cotton from Demopolis, a point on the Bigbee River, to Mobile, and that the defendant had agreed with the Louisville & Nashville Railroad Company and other rail carriers not to transport cotton reaching Mobile by water from points on Alabama rivers for less than \$1.25 per bale.

The court held that this agreement was in violation of the second and third sections of the act to regulate commerce, and therefore unlawful, and that the defendant must receive and transport this cotton for its established rate of 80 cents per bale.

This case is in no respect an authority for the proposition contended for by the complainant. Under its doctrine there might be some question whether the defendants could apply a different rate to ex-lake grain from the established local rate from Buffalo, although the case does not in terms so hold, but it goes no further. If, for example, some railroad had led from Demopolis to Mobile and that railroad, together with the Mobile & Ohio, had established a joint rate on cotton from Demopolis to New Orleans under which the Mobile & Ohio received for its division a less sum than 80 cents per bale, this would have afforded no conclusive reason for reducing the local rate of 80 cents from Mobile to New Orleans, much less for requiring the Mobile & Ohio to transport the cotton of the packet company for the amount of its division.

In the *Banner Milling case*, 14 I. C. C. Rep., 398, we considered an advance in the rate on flour from Buffalo to New York from 10 to 11 cents, and from Buffalo to Boston and New England points from 12 to

13 cents. It was there held that the advance was unjustifiable, and carriers were ordered to restore the 10-cent rate. This case rested largely upon the fact that the flour to which the advanced rate applied was ground from grain which reached Buffalo by water, that the rate on flour from Buffalo had been advanced, while there had been no corresponding advance in the rate paid by the competitors of Buffalo, who ground flour at other points from the same wheat.

Subsequently, in the *Jennison case*, 18 I. C. C. Rep., 113, the rates on flour from Minneapolis, Duluth, and other northwestern points were brought to the attention of the Commission, the claim being that those rates had been advanced upon the Great Lakes until the rate charged for the transportation of the products of wheat was too high in comparison with that charged by the same carriers for the transportation of the wheat itself from the western lake ports to Buffalo. After an exhaustive examination of the matters involved we reached the conclusion that this claim was well founded, and we ordered a reduction of the lake-and-rail rate on flour from Duluth to the Atlantic seaboard.

Thereupon a petition for rehearing was filed in both the *Jennison case* and the *Banner Milling case*. The carriers urged with great earnestness and produced evidence tending to show that to reduce the lake-and-rail rate as proposed in the *Jennison case* would have the effect of reducing all flour rates, and consequently all grain rates throughout the west; and upon a further consideration of the whole question we were impressed with the force of this claim, and we decided to reconsider our first conclusion in the *Banner Milling case* and to allow the establishment of the 11-cent rate from Buffalo to New York, with corresponding advances to New England points.

Ex-lake rates have always been named by the bushel, while local rates from Buffalo are named in cents per hundred pounds. The present ex-lake rates, allowing for the differences which would arise from this method of stating rates, are substantially the same as the local rates on wheat and flour from Buffalo. The ex-lake rate on wheat to New York, for example, is 10.8 cents, as compared with 11 cents on flour, while the ex-lake rate on wheat to Boston is 13.3 cents, as compared with a rate of 13 cents upon flour. It did not appear why ex-lake rates might not be stated in cents per hundred pounds, nor why they might not well be exactly the same as the local rates from Buffalo, instead of being, as at present, slightly lower in some cases and slightly higher in others; but no question was made upon this ground.

As already observed and as fully stated in the *Banner Milling case*, flour ground at Buffalo is almost entirely from wheat received ex-lake at that port. It is difficult to see how this Commission, if it is to maintain the parity of rate between wheat and flour which generally

prevails, upon the strength of which mills have been erected at Buffalo and throughout all parts of the United States, and which has been generally approved by this Commission, could enforce or even permit the charging of a rate upon grain from Buffalo materially lower than the rate upon the flour manufactured at Buffalo from that grain. To sustain the contention of the complainants would require us to establish rates on wheat from Buffalo from 3 to 5 cents per 100 pounds less than the present flour rates. The effect of such a rate adjustment would be not only to injure the mills at Buffalo but to seriously affect those at all western points. While there is very great force in the contention of the complainant, we feel that, upon a view of the entire situation, it can not be accepted. If this rate from Buffalo were unreasonably high, so that the cost of transporting grain or grain products from the western point of origin via the Great Lakes to the eastern point of consumption was unreasonably high, it would be our clear duty to reduce this rate; but where it is practically admitted that the transportation charge is not excessive, and where we are asked to take this action simply because more grain would thereby flow through a particular grain market, we are at liberty, in just consideration of all interests, to decline to interfere with the present arrangement, which is, in the main, satisfactory.

Ex-lake rates were in fact for many years lower than corresponding local rates from Buffalo, and the complainants point to this as the most conclusive evidence that the maintenance of lower ex-lake rates to-day would not break down the rate structure. But it must be remembered that until about the time when these rates became substantially what they now are the published tariff was not observed, and that this was especially true of highly competitive business, like grain and grain products, where the rate was of vital importance.

It should also be noted that Buffalo millers have always insisted that the charging of a lower rate upon ex-lake wheat than upon the flour ground from that wheat was a discrimination against Buffalo. Now that published rates are actually observed, and that the margin of profit tends to decrease rather than increase, we can not assume that any locality can grind flour under a permanent rate disability. To make the rate on ex-lake wheat to New York City materially lower than the rate on flour from Buffalo would inevitably throw the grinding of flour consumed in the city of New York and that vicinity to the seaboard.

EXPORT RATES.

In former years the United States has been a large exporter of wheat and other grains. This grain has been produced in the middle west, from which it might reach the foreign destination either by way of the

Gulf ports like New Orleans and Galveston or by way of the North Atlantic ports. The cost of the transportation has usually determined the route which the traffic would take.

Lower export rates have generally been maintained through all the ports than the corresponding domestic rates, and the rail export rates through the North Atlantic ports from Montreal on the north to Norfolk on the south have borne a certain relation to one another, the rate to New York being somewhat higher than to the various out-ports, so called, except Boston, for the reason that the shipping facilities of New York are superior and the water rate from that port somewhat lower than from the others.

During the season of navigation export grain moves largely via the Great Lakes. From the lakes to the port of export there have been in the past three possible routes: First, all water via the Welland Canal and the St. Lawrence River to Montreal; second, all water via the Erie Canal and the Hudson River to New York; third, from one of the eastern lake ports, of which Buffalo is the principal, by rail to the port of export from Baltimore upon the south to Montreal upon the north. The rail rate from Buffalo to New York has furnished the standard for rail rates from all other lake ports to all ports of export.

Below is given a table showing, since 1889, ex-lake and local rates upon wheat from Buffalo to New York, both export and domestic, and also from Chicago to New York:

Year.	Buffalo to New York.			Chicago to New York.	
	Local.	Ex-lake.		Rate per 100 pounds.	
	Rate per 100 pounds.	Rate per bushel.			
			Domestic.	Export.	Domestic.	Export.
	Cents.	Cents.	Cents.	Cents.	Cents.
1889.....	13	6½	6½	25	25
1890.....	13	5½	5½	22½	22½
1891.....	13	5½	5½	25	25
1892.....	13	4½	4½	25	25
1893.....	13	6	6	25	25
1894.....	11	5	5	20	20
1895.....	18	5	5	20	20
1896.....	11	5	5	20	20
1897.....	11	5	5	20	20
1898.....	11	5	5	20	20
1899.....	11	5	5	17	12
1900.....	9	5	5	15	13½
1901.....	10	5	5	17½	16
1902.....	10	5	5	17½	13½
1903.....	10½	6	5	18	14
1904.....	10	6	4	17½	13½
1905.....	10	4½	4½	17½	13½
1906.....	10	5	5	1½	13½
1907.....	11	6	6	17½	18
1908.....	11	6½	5½	16	13
1909.....	10	6½	5½	16	18
1910.....	10	6½	5½	16	13
1911.....	11	6½	5½	16	18

The foregoing table does not purport to give all the published rates which have been in effect during the period covered, but only what may be termed the prevailing rate for each year. In case of the ex-lake rate reference has been had to the season of open navigation only for the purpose of determining what was the prevailing rate.

It should also be noted that until recently grain has not moved from Chicago to the seaboard upon the published rate, but rather under a transit privilege upon a balance of some through rate. At the present time there is in effect from Chicago what is known as a "reshipping" rate, which applies to all grain loaded at Chicago, with the exception of certain instances where the transit rate still applies. The published rate from Chicago is therefore to-day, both export and domestic, the rate which actually moves the traffic, and we have, for the first time, in the published tariff a statement of the actual rates of various kinds from Buffalo and Chicago.

It should further be noted that until recently the published rate has not been maintained. The published ex-lake rate from Buffalo, for example, never fell for any considerable time below 4 cents per bushel on wheat, but we know from investigations conducted by this Commission that the actual rate, especially as applied to the export movement, fell as low as 2.75 cents per bushel, and did not probably average for the entire season much in excess of 3 cents.

It will be seen from an examination of the above table that while there were temporary differences between export and domestic in the ex-lake rate before 1908, there was no settled practice until that year by which a different rate was applied. During that season of navigation and since the export rate has been uniformly 1 cent below the domestic.

When it is remembered that, as a rule, the published export rate had, previous to 1908, never exceeded 5 cents per bushel; that it had sometimes been as low as 4 cents, and that the actual rate had been less than the published rate, it will be seen that the cost of transporting export wheat from Buffalo to New York is very materially greater to-day than in the past.

It has been already noted that grain afloat upon the Great Lakes may move all-water to Montreal. It was stated in the course of this hearing that at the present time ships carrying 80,000 bushels of wheat could load at the dock in Chicago and unload at the dock in Montreal, and that the rate of transportation via this water route did not exceed 3.5 cents per bushel.

Grain afloat may reach New York via the Erie Canal, and this formerly was a most important factor in the grain-rate situation, since the cost of transportation to New York Harbor was largely determined by the cost of carriage from Buffalo via the Erie Canal, which fixed the

rail rate to New York and thus in fact made the rate to all other ports. At the present time the Erie Canal for practical purposes is out of commission. The state is expending a large sum of money in the improvement of that waterway with a view to making possible the use of very much larger barges than can at the present time be employed and thereby cheapening the cost of transportation. Pending these improvements which are now in progress no one will buy equipment of the type which can now be used, since within a few years that must become entirely obsolete, and the present equipment is insufficient to provide any substantial competition by that route. It seems probable that this decline in competition via the Erie Canal is largely responsible for the increase in ex-lake rates, both export and domestic.

The New York Produce Exchange claims that the effect of recent increases in ex-lake export rates, taken in connection with the all-water route to Montreal, which has been developed largely within the last few years, has been to so cheapen the cost of handling grain through Montreal as compared with New York that the export business is leaving the port of New York for the port of Montreal, and that in the very near future the export grain movement through New York will be reduced to a practical nullity. In evidence of this it introduces certain tables showing the comparative movement through these ports in recent years. The following table gives the percentage of total wheat exports through the ports named for the years named:

Percentage of total exports.

Year.	Montreal.	New York.	Boston.	Philadel- phia.	Baltimore.
1902.....	28.36	28.69	12.88	11.46	12.59
1906.....	33.34	30.57	14.52	9.44	9.88
1907.....	30.99	30.57	13.30	14.56	10.02
1908.....	43.38	23.09	6.62	14.03	11.83
1909.....	52.84	19.85	9.78	11.41	6.89
1910.....	54.16	15.98	8.47	10.73	10.66

The table below gives the total number of bushels handled for the same years through New York and Montreal, with the percentages for each year:

Year.	Quantity in bushels.			Percentage.	
	New York.	Montreal.	Total.	New York.	Montreal.
1902.....	17,085,718	16,888,505	33,974,223	50.28	49.72
1906.....	12,691,701	13,842,586	26,534,287	47.83	52.17
1907.....	17,875,700	18,122,009	35,997,709	49.66	50.34
1908.....	16,211,918	30,461,347	46,673,265	34.74	65.26
1909.....	9,247,938	25,031,635	34,279,548	27.00	73.00
1910.....	6,026,421	20,420,034	26,446,455	22.79	77.29

The exports of wheat grown in the United States are decreasing, owing to the fact that our home consumption is steadily increasing. Upon the other hand, the Canadian northwest is developing an enormous wheat acreage, which is increasing rapidly the quantity of wheat exported from Canada. It is urged that the location of this wheat is such that it should naturally move out through Montreal and not through an American port of export. As bearing upon this suggestion the following tables are given showing exports of wheat grown in the United States and also wheat grown in Canada through the ports of New York and Montreal. In examining these tables it should be borne in mind that during the year 1910 there was in effect through New York an export rate of 4 cents per bushel from Buffalo applicable to Canadian wheat in bond, but not to American wheat.

Wheat grown in the United States.

Year.	Quantity in bushels exported from—		Percentage.	
	New York.	Montreal.	New York.	Montreal.
1906.....	10,454,682	949,155	91.7	8.3
1907.....	15,252,783	4,774,267	76.2	23.8
1908.....	13,902,028	10,908,195	56.1	43.9
1909.....	7,411,214	10,731,498	40.9	59.1
1910.....	1,303,696	3,882,885	25.1	74.9

Wheat grown in Canada.

Years.	Quantity in bushels exported from—		Percentage.	
	New York.	Montreal.	New York.	Montreal.
1906.....	2,237,019	12,898,431	14.8	85.2
1907.....	2,622,917	13,347,742	16.4	83.6
1908.....	2,309,890	19,558,152	10.6	89.4
1909.....	1,836,699	14,300,137	11.4	88.6
1910.....	4,732,725	16,587,149	22.3	77.7

It is impossible to study the figures in the foregoing tables without the conviction that the trend of the export wheat business, even in wheat produced in the United States, is steadily from American ports to Montreal, and it is impossible to attribute this to any other cause than the inland rate of transportation.

In every respect, except the cost of carriage to the port of export, New York has the advantage of Montreal. Montreal is a winter port, not available during several months of the year. At all times in the year the cost of insurance from that port is much higher than from New York, owing to the perils of navigation upon the River St. Lawrence. The shipping facilities of New York are much better than Montreal. New York reaches many points of consumption to which

there is no direct service from Montreal, and the rate of transportation itself is usually lower from New York.

In addition to transportation facilities New York is a great grain market, with large elevator capacity, where wheat can be stored during the period of lake navigation for export later in the season. All these circumstances, say the New York grain interests, should give to that port a large part of the export business. They have therefore earnestly appealed to the carriers to establish a rate which will permit them to handle a portion of that traffic, and not succeeding in that quarter have now come to this Commission with the same prayer.

So far as the case of the complainant can be established by showing the necessity for the rate demanded the case of this complainant has been made out. We are impressed with the thought that New York can not permanently retain its export grain business in anything like the same relative volume as in years gone by upon the present adjustment of rates. It asks that the carriers establish, during the period of navigation, a rate of 4 cents per bushel from Buffalo. Whether this rate would enable New York to hold its own as against Montreal is doubtful, but it would certainly be much preferable to the present rate of 5.5 cents.

The carriers decline to accede to this request for two reasons.

They say that 4 cents per bushel is not a remunerative rate, and that they prefer to allow the business to go elsewhere rather than establish this rate.

The ex-lake rate includes elevation at Buffalo; that is, the cost of transferring the grain from the vessel to the elevator and from the elevator to the car, for which a uniform allowance of one-half cent per bushel is made by the carrier to the elevator. This leaves for the rate of transportation 3.5 cents per bushel.

The rate also includes at the city of New York a delivery alongside the ship. At New York grain is not loaded from the elevator into the vessel as it is at most other ports, but is barged from the car to the ship, into the hold of which it is transferred by a floating elevator. The testimony indicates that this additional service costs from one-half cent to 1 cent per bushel, and the carriers insist that this is an extraordinary item which should also be deducted from the rate before the real transportation charge is reached. If it be assumed that the cost of lighterage in New York Harbor is one-half cent per bushel, we have left for the transportation charge proper, from Buffalo to New York, 3 cents per bushel, equivalent to 5 cents per 100 pounds, and yielding, for a distance of something over 400 miles, a return of 2.5 mills per ton-mile, which is, upon its face, an extremely low rate of transportation.

The complainants urge that this export wheat is moved in large lots from Buffalo to New York—usually in trainloads—to which the

carriers reply that this is not an advantage but rather a disadvantage, since they are obliged to provide facilities for the handling of this traffic at a particular time in order that connection may be made with the exporting vessel. This necessitates the parking of cars at Buffalo and the handling of an unusual amount of traffic which may interfere with their other business.

The average carload of wheat is about 1,000 bushels, yielding, at 3 cents a bushel, \$30 per car. Fifty cars can be moved in a train from Buffalo to New York by most routes, amounting, per trainload, to \$1,500. The mere cost of moving that train is much less than this amount. If no account be made therefore of the expenses other than those of the movement, there is a profit.

The complainants point to the fact that in former years the published rate was but 4 cents per bushel and that carriers often accepted as low as 2½ cents per bushel for handling this business. They further suggest that while the rate of 4 cents was in effect in 1908, applicable to all wheat, and in 1910, applicable to Canadian-grown wheat, these defendants were anxiously soliciting the business.

It should also be noted that if lighterage in New York Harbor be disregarded the carrier of ex-lake grain from Buffalo would receive, at 4 cents per bushel, 3½ cents after deducting elevation at Buffalo, and that this is slightly in excess of its division of the present export rate of 13 cents from Chicago, which the carrier voluntarily makes for the purpose of participating in that business.

It seems probable that 4 cents per bushel yields, all things considered, a substantial profit over the cost of the movement. If the carrier has surplus facilities not otherwise demanded, it would find business upon that rate to its advantage; it may be doubted whether additional facilities could be provided for the handling of this traffic at that figure.

The real reason why these defendants decline to accede to the request of the New York interests for the 4-cent export rate seems to be the fear upon their part that the result of complying with that request would be to disorganize the general rate structure upon grain and grain products from the west to Atlantic seaboard territory.

In 1908 the defendants, upon the insistent request of the New York grain interests, did establish and maintain, for 57 days, an export rate of 4 cents per bushel. This rate was withdrawn because the defendants believed that its continuance would result in a reduction of the rates from the west upon grain and grain products. During the season of 1910 a rate of 4 cents was applied to the movement of Canadian grain in bond, but the defendants are satisfied that no distinction can be maintained between Canadian and American wheat and, therefore, upon a view of the entire situation, have declined to restore the 4-cent rate.

The difference between the domestic and export rate from Chicago at the present time is 3 cents per 100 pounds. The difference between the export and the domestic rates, ex-lake, at the present time is 1 cent per bushel, or six-tenths of a cent per 100 pounds. It will be seen, therefore, that the difference in export rates where the wheat moves by the Great Lakes from Chicago is much less than the difference where it moves all rail. At 4 cents per bushel the difference would still be in favor of the all-rail route.

American millers insist that to make a rate of 4 cents on wheat without a corresponding rate upon the product of wheat is to discriminate against the home miller in favor of his foreign competitor. It can not be denied that the result of making a lower transportation charge on the wheat than upon the flour to foreign destinations does operate in favor of the foreign miller, but it must also be recognized that the cost of transporting wheat by water is less than the cost of transporting flour by water, and that wheat will move to the foreign consumer in the form of wheat cheaper than it can be moved in the form of flour, unless the Government sees fit to make an arbitrary rule that whatever carrier transports wheat at a certain price shall carry flour at the same price, which is not suggested. This wheat will move abroad through the port of Montreal if it does not move through the port of New York, and it is doubtful whether the claim of the miller and of the western railroad that the effect of this 4-cent ex-lake export rate would be discriminatory toward them is well taken. It would not materially increase the amount of wheat which will be exported; it would simply determine whether that wheat should flow through an American or a Canadian port of export.

We are inclined to think that, under all the circumstances, these carriers might well establish, during the period of navigation, a 4-cent ex-lake export rate upon wheat and corresponding rates upon other grain, but the rate itself is so low, the margin over and above the cost of operation is so narrow, that we do not feel warranted in making this requirement. Whether it shall be established is a matter of policy which must be left to the carriers themselves, and not a matter of right which may be demanded by the port of New York. When the improvements in progress upon the Erie Canal are completed that waterway will undoubtedly determine the rate at which grain shall be carried from Buffalo to tidewater.

The grain interests of the city of Baltimore have intervened in this proceeding. They join with the New York Produce Exchange in asking that a 4-cent rate be established from Buffalo to New York, but they insist that the differential in favor of Baltimore which now exists upon this ex-lake business should be wider.

Some years ago railroads transporting ex-lake grain from eastern lake ports to Baltimore, Philadelphia, New York, and Boston became

involved in a controversy as to the relative rate upon which that traffic should be handled to the various ports, which resulted in a serious rate war. The question was finally submitted to this Commission, which, after careful consideration, expressed the opinion that a differential of three-tenths of a cent per bushel should be allowed Baltimore upon this traffic. *In re Differential Rates*, 11 I. C. C. Rep., 13. The city of Baltimore now shows that under this differential no ex-lake grain moves through the port of Baltimore, and it asks that whatever the rate may be the differential in favor of that port be increased.

All the ports interested were parties to the proceeding by which that differential was originally fixed, and all are interested in any change in the differential. We do not feel that we ought to reconsider the conclusion then reached, except upon some proceeding to which all these ports are parties, and in which a thorough reinvestigation of the whole subject is made. It was stated upon this hearing that the port of New York was also dissatisfied with the conclusion reached by the Commission touching these port differentials, and that a complaint was now being prepared by the New York Produce Exchange which would present the subject anew. However that may be, the intervening petition of the city of Baltimore will be at this time dismissed without prejudice to the right of that locality to urge, in some subsequent proceeding, the ground taken here.

The petitions in both the cases are also dismissed.

20 I. C. C. Rep.

No. 3542.

WILLIAM K. NOBLE

v.

JONESBORO, LAKE CITY & EASTERN RAILROAD COMPANY ET AL.

Submitted February 15, 1911. Decided April 4, 1911.

1. The act to regulate commerce confers upon this Commission jurisdiction over a complaint for the recovery of a damage resulting from misrouting a shipment where such damage arises from a rate or charge in excess of the lawful rate or charge that would have applied via the route over which the shipment properly should have moved, or movement over which was specifically directed by the shipper.
2. From the facts developed in this case; *Held*, That complainant is entitled to reparation in the difference between the rate charged on his shipment for the actual movement thereof and the rate which would have applied had defendant observed the routing specified in the bill of lading.

R. B. Coapstick for complainant.

W. F. Evans and *Fred H. Wood* for St. Louis & San Francisco Railroad Company and Chicago & Eastern Illinois Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complainant is a manufacturer of and dealer in slack-barrel cooperage stock at Fort Wayne, Ind. By a complaint filed September 19, 1910, he alleges the imposition of unjust and unreasonable charges on a shipment December 9, 1909, of one carload of staves, weight 40,500 pounds, from Monette, Ark., to Jackson, Mich. Reparation is asked.

The shipment was originally consigned to Bement, Ill., and routed, as shown by the original bill of lading, via the Wabash Railroad at St. Louis. On December 11, two days after the shipment moved from point of origin, the complainant mailed to the commercial agent of the Wabash Railroad at St. Louis the original bill of lading and instruction to reconsign the car to Jackson, Mich. They were received by the Wabash agent on December 13, and the instruction

transmitted by him to the Wabash local agents at East St. Louis and Bement, Ill. The routing "via the Wabash Railroad at St. Louis" was communicated by the initial carrier, the Jonesboro, Lake City & Eastern Railroad, to its connection, the St. Louis & San Francisco Railroad, but the latter ignored it and delivered the shipment at Thebes, Ill., to the Chicago & Eastern Illinois Railroad, which hauled it to Altamont, Ill., where it was given on December 28 to the Wabash Railroad for terminal delivery. When the complainant learned of the arrival of the shipment at Bement, he had it forwarded to Jackson, Mich. Charges were collected on basis of a rate of 36½ cents, made up of 23 cents to Bement and 13½ cents beyond.

The complainant contends that had the shipment moved as routed in the bill of lading the rate lawfully applicable would have been 28 cents, and asks reparation for the charge imposed in excess thereof. It appears from the tariffs on file with the Commission that no joint rate was in force from Monette to Bement, or to Jackson, via either the route of movement or the route shown in the bill of lading. The lowest combination to Bement via both routes was 23 cents. Shipments covered by the tariff naming the rate via the Wabash from St. Louis to Bement were subject to reconsignment without extra charge under certain conditions which were complied with by complainant. Under this reconsignment privilege the sum of the intermediate rates to Jackson of 28 cents, as claimed, would have applied on the shipment had it moved in accordance with the routing instruction. It is clear that the failure of the Frisco to observe the routing shown in the bill of lading deprived the complainant of the application of the 28-cent rate and resulted in the shipment moving to Jackson via a route over which the lawful rate was 36½ cents as charged.

The Frisco road in its answer admits the facts connected with the shipment, including the non-observance of the routing specified, but alleges that we are without jurisdiction over the subject-matter of the complaint for the reason that the complaint asks an award of damages growing out of facts and circumstances not constituting a violation of the act to regulate commerce. No hearing was had, but this defendant asked and received permission to file a brief in support of this contention.

The brief quotes freely from the case of *Blume & Co. v. Wells Fargo & Co.*, 15 I. C. C. Rep., 53, and submits "that the reasoning of the Commission in that case and the rule there announced are applicable to this complaint." In the *Blume case* the Commission referred to breaches of duty by common carriers resulting in "the loss of or damage to property in transit, the failure to make delivery safely and with reasonable dispatch in accordance with the contract,

express or implied, which a carrier enters into when accepting a shipment for carriage" as being "matters that are solely within the jurisdiction of the courts," and stated that the complaint therein was of such a character.

The difference between the character of the complaint in the *Blume case* and in this case is sufficient to remove the former from our jurisdiction and to bring the latter within our power to afford relief. The complaint here is for the recovery of a damage alleged to be due to the imposition of an unjust and unreasonable freight charge; a damage that is measured by the difference between the rate which would have applied for the transportation via the route directed and the rate imposed for the transportation via the route of actual movement. The complainant's contract of transportation called for a specific routing which no one of the defendants could disregard without being liable for any damage directly resulting therefrom. The Frisco road failed to observe this obligation, and as a direct result of such action complainant was compelled to pay a freight charge which, under the circumstances, was unreasonable and excessive.

A case similar to this was *Kile & Morgan v. Deepwater Ry. Co.*, 15 I. C. C. Rep., 235. We assumed jurisdiction over that complaint and in our report said:

Carriers at fault in misrouting are liable for damages represented by higher charges than would have been lawfully assessable had the misrouting not occurred, and we do not adopt defendant's contention that liability attaches for such damage only as can be reasonably seen or anticipated. A shipper can not be deprived through a carrier's negligence of any lawful privilege offered by another carrier, especially after due diligence on his part to secure such advantage; but such privilege must itself be not only one which the carrier may lawfully allow after the establishment thereof, but it must also be duly established and filed with the Commission, as are rates and all privileges and services to which they apply.

Another case similar to this was *Cressey & Co. v. C., M. & St. P. Ry. Co.*, 18 I. C. C. Rep., 132, wherein we awarded reparation because of the action of defendant in disregarding complainant's routing instruction.

From our consideration of the question presented by defendant herein, we are convinced that we did not err in the cases before cited and that the act to regulate commerce confers upon this Commission jurisdiction over a complaint for the recovery of a damage resulting from misrouting a shipment where such damage arises from a rate or charge in excess of the lawful rate or charge that would have applied via the route over which the shipment properly should have moved or movement over which was specifically directed by the shipper.

Under the circumstances we are of opinion and find that defendant St. Louis & San Francisco Railroad Company should pay to complainant the sum of \$34.42, with interest thereon from the 19th day of January, 1910, which sum is the difference between the rate of 36½ cents per 100 pounds charged on the shipment in question for the actual movement thereof and the rate of 28 cents per 100 pounds which would have applied on the shipment had said defendant observed the routing specified in the bill of lading.

An order will be entered accordingly.

No. 3326.

BIG CAÑON RANCH COMPANY AND-CORDER & COMPANY, INTERVENER,

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY ET AL.

Submitted January 10, 1911. Decided April 4, 1911.

Complainant alleges that the charges exacted by defendants for transportation of certain carloads of sheep from Dryden and Sanderson, Tex., to Soldani, Okla., were unreasonable. It appears that the shipments moved from points of origin to Fort Worth, Tex., where freight charges were paid, and delivery made to the shipper's agent, who thereupon took out new bills of lading for the movement to Soldani; *Held*, That the movement to Fort Worth was intrastate and therefore not subject to the jurisdiction of the Commission, and that the charges for the interstate movement beyond Fort Worth do not appear to have been unreasonable. Complaint dismissed.

J. B. Ross for complainant.

F. C. Dillard, H. M. Garwood, and J. R. Christian for Galveston, Harrisburg & San Antonio Railway Company.

J. L. West for Missouri, Kansas & Texas Railway Company of Texas.

T. J. Norton and J. S. Hershey for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation engaged in the live-stock business, has its principal office in San Antonio, Tex., and a stock ranch in Terrell County, Tex. The intervener is a partnership engaged in the same business, having its principal office and a stock ranch in the same county. In petitions filed June 16, 1910, it is alleged that the combination of intermediate rates charged by defendants, aggregating \$119.90 per double-deck car, for the transportation of a number of carloads of stock sheep shipped April 28 and May 1, 1909, from Dryden and Sanderson, Tex., to Soldani, Okla., were, as applied to such through transportation, unjust and unreasonable to the extent that they exceeded a joint rate of \$83.35 per car applicable on stock cattle between the same points. Reparation is asked.

The shipments of complainant were made from Sanderson and those of the intervener from Dryden. They moved via the Galveston, Harrisburg & San Antonio Railway, on which Sanderson and Dryden are located, to San Antonio, Tex., thence via the Missouri, Kansas & Texas Railway to Fort Worth, Tex., and from that point via the Gulf, Colorado & Santa Fe and Atchison, Topeka & Santa Fe Railways to destination. On account of drought in the vicinity of Sanderson and Dryden these stock sheep were sent to Oklahoma to pasture. The testimony is that no similar shipment of sheep had ever been made from those points before and none has been made since.

Live-stock contract bills of lading were issued at Dryden and Sanderson by the initial carrier for the transportation of the sheep, which were consigned to an agent of the complainant and intervener at Fort Worth, and were shipped in 26 double-deck and 58 single-deck cars. At Fort Worth charges to that point were paid at the rate of 30 cents per 100 pounds, at minimum weights of 22,000 and 11,000 pounds for double and single deck cars, respectively, amounting to \$66 and \$33 per car. The sheep were unloaded, fed, and watered at the stockyards at Fort Worth, and after having remained there overnight reloaded. The reloading was into 34 double-deck and 41 single-deck cars which were, with but few exceptions, other and different from those in which the sheep had been transported from Dryden and Sanderson to Fort Worth. The cars were delivered at North Fort Worth to the Gulf, Colorado & Santa Fe Railway Company, which issued bills of lading for the transportation from Fort Worth to Soldani, and collected prepayment of freight charges for the new movement at rate of 24½ cents per 100 pounds, or \$26.95 for single-deck and \$53.90 for double-deck cars.

Previous to shipping the sheep complainants had sent stock cattle to a point in Oklahoma on the Midland Valley Railway. At that

time they were informed that there were no joint through rates in effect via Fort Worth, although there were such rates established via Rosenberg, the junction point of the Galveston, Harrisburg & San Antonio and Gulf, Colorado & Santa Fe Railways. In order to secure a possibly quicker service, however, complainants routed the shipments of stock cattle via Fort Worth at a combination of rates not greatly in excess of the through rate via Rosenberg. When they later desired to ship the sheep they found themselves confronted by the same situation, that is, that there were no joint through rates in effect via Fort Worth. Although they decided to ship four weeks in advance of the actual forwarding, they assumed that the rates applicable on stock sheep would be no higher than the rates on stock cattle, and without making any examination of the tariffs, inquiry of the carrier, or application for the establishment of joint through rates, routed the sheep via the Missouri, Kansas & Texas Railway to Fort Worth. The distance from Dryden via San Antonio to Fort Worth via the Galveston, Harrisburg & San Antonio and the Missouri, Kansas & Texas is 563 miles, and from Sanderson 584 miles. The distance from Fort Worth to Soldani is 314 miles. Via the Galveston, Harrisburg & San Antonio, Gulf, Colorado & Santa Fe and Atchison, Topeka & Santa Fe Companies the distances from Dryden and Sanderson to Soldani are, respectively, 1,053 and 1,074 miles.

When these shipments moved there was no joint through rate on stock sheep via any route from Dryden and Sanderson to Soldani. The rate for a distance of 600 miles and over 550 miles, applicable from Dryden and Sanderson to Fort Worth, was, and is, on stock sheep, double-deck cars, minimum weight 22,000 pounds, 30 cents per 100 pounds; and from Fort Worth to Soldani, on a similar car and minimum, 24½ cents per 100 pounds. Via Rosenberg the combination aggregated \$127.60 per car.

The rate on stock cattle, Dryden to Soldani, is \$80.50, and from Sanderson to Soldani, \$83.35, for a 36-foot car. The rate on beef cattle from Sanderson to Kansas City is 48½ cents per 100 pounds, for sheep, Sanderson to Kansas City, 52½ cents per 100 pounds. Since these shipments moved defendants have established a joint through rate on stock sheep applicable via Rosenberg, which from Sanderson and Dryden to Soldani is \$15 per car higher than the rate on stock cattle, or \$98.35. All of the joint through rates are applicable via routes other than that traversed by the shipments in controversy.

Complainants argue that it having been the intention, so understood by the agent of the initial defendant, to make a through shipment to Soldani, the application of a combination of intermediate rates

on stock sheep higher than that on stock cattle, resulted in the exaction of an unreasonable charge. Defendants maintain that the transportation from Sanderson and Dryden to Fort Worth was intrastate and not within the jurisdiction of this Commission and that the separately established rates were just and reasonable.

The facts disclosed by the record bring this case clearly within the rule announced by the Supreme Court of the United States in *G., C. & S. F. Ry. Co. v. Texas*, 204 U. S., 403. As noted, the freight charges up to Fort Worth were paid at that point, the property was delivered into the possession of the shipper, and a new contract with another carrier for transportation of the sheep to Soldani was executed. Although it was undoubtedly the intention of the shipper to forward the sheep from point of origin to Soldani, in the case above cited the court held that the intention of the shipper is immaterial, and that the question whether a particular shipment is subject to state or federal laws must be determined by examination of the contract for transportation. In the present case the Galveston, Harrisburg & San Antonio Railway Company and the Missouri, Kansas & Texas Railway Company were under no obligation, nor had they any right, to transport or forward the shipments beyond Fort Worth. Upon delivery at that point the transportation required by the shipper was completed. It follows that the first movement and the charges therefor were not subject to the act to regulate commerce or the jurisdiction of this Commission. Upon the facts now within our knowledge we do not find that the rate from Fort Worth to Soldani is unreasonable. Complainant's prayer for reparation must therefore be denied.

As to the reasonableness of the present rates on sheep, which are \$15 per car in excess of the rates on cattle from Sanderson and Dryden to Soldani, as well as the propriety of a rate to Kansas City which is less for a longer than for a shorter haul over the same line in the same direction to Soldani, no opinion is now expressed, as the determination thereof is unnecessary to proper disposition of this case. Several reasons have been suggested by the carriers in support of a higher rate on sheep, including the fact that sheep are given a lower carload minimum than cattle, and we prefer to pass upon that question in a case where it is properly in issue. The defendants have filed their applications for permission to continue the application of rates which prima facie contravene the principle of the fourth section of the act, and this application will be heard and disposed of in due course. The complaint must be dismissed, and it will be so ordered.

No. 3393.
CHARLES GOLDENBERG
v.
CLYDE STEAMSHIP COMPANY.

Submitted December 27, 1910. Decided April 4, 1911.

Upon the facts disclosed by the record; *Held*, That defendant's action in connection with the storage of the property in question was not unreasonable and that complainant is not entitled to reparation; but that defendant has failed to comply with the law by reason of the fact that it has not filed with the Commission a tariff stating definitely the storage privileges and charges applicable to shipments over its line which move partly by railroad and partly by water under a common arrangement for a continuous shipment.

C. E. Outterson for complainant.

W. P. Levis for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a wholesale dealer in rice, and has his principal place of business in Philadelphia, Pa. The defendant is a common carrier by water, and is engaged in the transportation of property partly by railroad and partly by water under a common arrangement for continuous shipment. In a petition, filed July 13, 1910, complainant alleges that by reason of the action of defendant he was required to pay an unlawful storage charge at Philadelphia, and asks reparation in the amount of the charge so paid.

In October, 1908, the New Orleans Rice Company shipped from Crowley, La., 597 pockets of rice consigned to the shipper's order, Philadelphia, Pa., with request to notify Charles Goldenberg at that place. The shipment moved by rail from Crowley to New Orleans, by water from New Orleans to New York, where it was received by defendant, carried to Philadelphia, and unloaded on its pier at that city on November 6, 1908. The next day complainant was advised of the arrival of the rice, and notified to remove the same

from the wharf within four days. On November 11 the rice was removed by defendant from its dock and stored in a public warehouse. On November 13 the complainant became possessed of the bill of lading for the shipment by paying a draft attached thereto, and on November 14 presented it to the defendant. On orders from complainant the rice was delivered to individual purchasers thereof from time to time up to December 28, and the total storage bill was \$52.24, the amount of reparation asked. Defendant did not receive any part of the charge made by the public warehouse. This proceeding is brought upon the theory that complainant was entitled to free storage upon defendant's wharf for four days, exclusive of Sundays and legal holidays, after notice of arrival of the shipment, and that he was deprived of this right by defendant's action in sending the rice to a public warehouse prior to the expiration of four days.

The defendant had no tariff on file with the Commission covering wharfage or storage privileges applicable to this shipment. The rice moved under a joint rail-and-water rate named in a tariff which referred to issues of individual lines, parties to the tariff, and lawfully on file with the Interstate Commerce Commission, for rules and regulations regarding storage, terminal charges, etc.; but the Clyde Line did not at that time, nor does it at the present time, file a tariff of its own containing rules regarding length of time shipments may remain on its wharves or other premises or providing storage charges. It follows that we have before us the lawfulness of a regulation or practice not covered by a tariff on file. In *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C. Rep., 90, the Commission held that where a transportation service has been rendered for which no tariff authority exists, and the shipper has paid the sum claimed by the carrier for that service, the Commission has jurisdiction to determine the reasonable charge for the service and to order repayment of the amount in excess thereof collected by the carrier. Upon this principle the Commission has authority to determine the issue here presented, whether the time allowed by defendant for removal from the wharf was in this case reasonable.

We are of opinion that complainant was not damaged by any unreasonable practice of defendant in limiting the free time for removing the shipment. It is to be observed that complainant did not become the owner of the bill of lading until November 13, two days after the shipment had been placed in storage, and therefore could not have removed the shipment from the steamship company's docks even if four full days of free time, exclusive of a Sunday which intervened, had been allowed. Consequently complainant's claim for reparation should be denied.

Before concluding this case we should inquire whether defendant is not violating the act to regulate commerce by its failure to file a tariff stating definitely its storage privileges and charges at Philadelphia. Section 1 of the act provides that the term "transportation" shall include:

All services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported;

and section 6 of the act makes it the duty of all carriers subject thereto to file tariffs which shall—

state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee.

It is therefore obvious from the plain language of the act that defendant has failed to comply with the law by its omission to file a tariff stating the storage facilities which will be allowed at Philadelphia. It is also apparent that in the absence of a tariff of this nature defendant can discriminate as it pleases in the matter of storage between individual shippers. No case of such discrimination is proved by this record, but the tariff situation should not be such that discrimination between individual patrons of the company is possible thereunder.

This complaint will be dismissed, but if defendant does not within 30 days from the date hereof file a tariff defining its storage privileges and charges at Philadelphia, appropriate action will be taken to enforce compliance by it with the provisions of the statute.

20 I. C. C. Rep.

No. 3409.

INTERNATIONAL SALT COMPANY OF ILLINOIS, COMPLAINANT, AND MORTON SALT COMPANY, INTERVENER,

v.

GENESEE & WYOMING RAILROAD COMPANY ET AL., DEFENDANTS, AND DETROIT SALT COMPANY AND STERLING SALT COMPANY, INTERVENERS.

Submitted February 27, 1911. Decided March 14, 1911.

Upon complaint that a carload rate of 10 cents per 100 pounds in effect for several years on coarse salt in bulk from Retsof, and certain other originating points in New York, to Chicago, is a normal and reasonable rate between those points and ought therefore to be scaled to intermediate points in Central Freight Association territory in accordance with the percentage system of rates; *Held*, That the record shows that the rate is compelled by competitive conditions that do not exist at intermediate points. For the reasons stated in the report the complaint is dismissed.

John B. Daish and John C. Howard for complainant and Morton Salt Company, intervener.

Henry Wolf Bikle for Pennsylvania Railroad Company and its affiliated lines.

H. A. Taylor and T. H. Burgess for Erie Railroad Company and Chicago & Erie Railroad Company.

Edgar H. Boles for Lehigh Valley Railroad Company.

J. E. Seager and H. B. Wallace for Delaware, Lackawanna & Western Railroad Company.

Adelbert Moot for Genesee & Wyoming Railroad Company.

Edward W. Brown and Ashley Bigelow for Sterling Salt Company, intervener.

W. E. McCornack for Detroit Salt Company, intervener.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

From Retsof and certain other originating points in the state of New York there is a carload rate of 10 cents per 100 pounds on coarse salt in bulk to Chicago. It has been in effect for several years. The complainant contends that it is the normal and reasonable rate between

those points, and ought therefore to be scaled to other destinations in Central Freight Association territory in accordance with the percentage system of rates. This would make the rate from Retsof to Fort Wayne, a 90-per-cent point, for example, 9 cents instead of 13 cents as at present, and to Cincinnati, 8.7 cents instead of 12 cents per 100 pounds. The petitioner also prays for reparation in a sum exceeding \$5,000 on several hundred carloads that moved during the last two years under the rates of which complaint is made.

The Morton Salt Company has intervened since the hearing, it having taken over the business of the International Salt Company of Illinois. For convenience we shall hereinafter refer to the two companies collectively as the complainants.

In order fully to understand the situation, it will be well to state the history of the various salt rates referred to on the record. Salt in carloads takes sixth class rates under the official classification, and the sixth class rate from New York City to Chicago is 25 cents per 100 pounds. There is, however, a general commodity rate of 20 cents applying on all movements of salt in carloads from New York City to Chicago, this rate being equivalent to 80 per cent of the sixth class rate. From Retsof, Syracuse, Cuylerville, and other salt-producing points in that vicinity, the sixth class rate to Chicago is 18 cents per 100 pounds, which is directly proportioned to the sixth class rate from New York City to Chicago; but salt in carloads, n. o. s., moves from those points to Chicago under a commodity rate of 14 cents per 100 pounds, which it will be observed is also 80 per cent of the sixth class rate. These class and commodity rates are all scaled to percentage-basis destinations. The special rate previously referred to, of 10 cents per 100 pounds from Retsof and other New York producing points to Chicago, applies only on coarse salt in bulk. This rate is not scaled to percentage-basis points. Induced, as the record indicates, by the competition of the Erie Canal in connection with the lake lines, it was first established in 1887 from Syracuse, where vast quantities of salt were then manufactured by evaporation or by the so-called solar process. After it had been in effect for three or four years, the rate was allowed to lapse for some years, being reestablished, as it is said, in 1904. The mines at Retsof, which is local to the line of the defendant, the Genesee & Wyoming Railroad Company, apparently were opened up as long ago as 1885. We are not definitely advised with respect to the early history of the rates from that point, but it appears from the record that the special rate of 10 cents to Chicago has existed from Retsof continuously since 1904. The mines at Cuylerville, a few miles from Retsof on the Pennsylvania Railroad, were not opened until 1907, but they were promptly given the benefit of the 10-cent rate to Chicago.

It therefore appears that with respect to movements of salt to destinations in Central Freight Association territory, the only exception to the percentage adjustment is the 10-cent rate on coarse salt in bulk from certain New York points to Chicago, which, as heretofore stated, the complainants seek to have scaled to intermediate destinations. They make no real effort to show that the higher rates to the latter points are unreasonable *per se*, but relying chiefly on the fact that the carriers themselves make few if any exceptions to the percentage-zone adjustment, they contend that there is no justification for an exception with respect to these rates. The defendants, on the other hand, point to a number of exceptions to the general adjustment in the way of special, low commodity rates.

The percentage-basis system, which is the general foundation upon which rests the whole structure of the east and west bound rates in the territory in question, has been fully described in *Saginaw Board of Trade v. G. T. Ry. Co.*, 17 I. C. C. Rep., 128. It is true that after there reviewing the history of that system of rate making and indicating that it had long been established and had impressed itself upon the commerce of the country and that traffic and transportation conditions had been adjusted to it, we said that alterations ought not to be made in the zone boundaries or the system subjected to other changes without adequate and just cause. But we were there dealing with the system as a maximum schedule of rates and did not intend to be understood as indicating that lower rates might not properly be established with respect to particular points under special justifying circumstances. We are here dealing with a departure from the percentage-basis system in the way of a specially low rate to a particular point, namely, Chicago, which is not scaled to other points in the percentage-basis territory. And the question before us is whether, under the circumstances and conditions affecting the traffic, there are sufficient reasons to justify this relation of rates. While the case is argued by the complainants principally from the standpoint of the percentage-zone adjustment, it is also presented as involving a violation of the fourth section, the carload rates on coarse salt in bulk to intermediate destinations exceeding the 10-cent rate to Chicago.

The defendants endeavor to justify the departure from the long-and-short-haul principle and from their usual rate adjustment in this territory by showing that the 10-cent rate to Chicago is a compelled rate, and that, if advanced to the regular basis of 14 cents, not only would the rail-line traffic from Retsof be diverted through Buffalo and the lakes, but the Chicago market would be closed to the competitors of the complainants at Cuylerville and other points. The defendants in this connection allege not only that

the dock facilities for handling and storing water-borne salt at Chicago are entirely controlled by the complainants, but that they also control the boat line that handles practically all the salt from Buffalo to Chicago. The Sterling Salt Company, which intervenes herein as the owner of mines at Cuylerville, confirms the suggestion that any increase in the 10-cent rate by rail to Chicago would keep it out of that market, while the complainants, on the other hand, through their relation to the mines at Retsof and their ownership of the boat line from Buffalo to Chicago and of the storage docks at the latter point, would still be able without embarrassment to ship to Chicago by way of the lakes.

Before discussing the question of water competition it will be well to say, without at this time pausing to mention the details, that the record indicates a substantial identity of interest between the salt companies interested in this proceeding and the Michigan, Indiana & Illinois Line, which handles practically all the bulk salt moving by water from Buffalo to Chicago and apparently transports little if any freight other than salt. That boat line is understood to be owned by the Morton Salt Company. The latter company has succeeded to the business of the International Salt Company of Illinois, the complainant herein, and is now the selling agent for the mines at Retsof. The record further indicates that the last-named company is a subsidiary corporation of the International Salt Company of New Jersey, which in turn owns the Retsof Mining Company; and, as will be hereafter explained, the relation between the Retsof Mining Company and the Genesee & Wyoming Railroad is in some respects a close one. It also clearly appears that the docks and facilities for unloading cargoes of bulk salt from vessels at Chicago are wholly controlled by complainants, being leased to their allied corporation, the Michigan, Indiana & Illinois Line. For the use of the docks and facilities at Chicago and for the labor involved in unloading and storing bulk salt there it is understood that the boat line pays an allowance of 40 cents per net ton to the complainants. We are also informed that the Retsof Mining Company has several boats of its own on the Great Lakes. Whether it uses them for the private transportation of its salt we are not advised. But our understanding is that they are frequently chartered by the Michigan, Indiana & Illinois Line for movements of bulk salt from Buffalo to Chicago, the charter rate usually paid to the Retsof Company being 45 cents per ton. It therefore appears that the general interests represented by these various incorporated salt companies through their subsidiary corporation, namely, the Michigan, Indiana & Illinois Line, dominate the rail-and-water movement of salt between Retsof and Chicago to the point of absolute control.

It is the companies thus affiliated that the defendants claim now force them to maintain the 10-cent rate to Chicago. Those interests ignoring the force of their own position in the lake-and-rail movement, contend, notwithstanding their dominating and controlling influence, that the 10-cent rate is a normal rate and ought to be scaled back to intermediate points.

On the facts heretofore stated and upon the whole record we are convinced that the all-rail rate of 10 cents to Chicago is a compelled rate. The complainants assert that it is substantially lower than the combination rail-and-lake rate, but we think the record shows the contrary by the testimony of their own witnesses. A singular fact in this connection is that it definitely appears that a very substantial part of the complainants' salt goes by lake and rail to Chicago, notwithstanding their contention that the all-rail rate offers a cheaper service. Cuylerville salt, however, apparently is unable to reach the Chicago market by the lake routes, although it does move in considerable volume by tramp steamers to Milwaukee and other western lake ports where dock facilities are available to independent shippers of salt. It is our understanding that there is no rail movement of coarse salt from the New York fields to Milwaukee. We are not informed as to the exact extent of the all-rail movement to Chicago. But after repeated inquiries we were advised by the complainants that the movement of salt in bulk by lake and rail from Retsof to Chicago during the shipping season of 1910 amounted to 37,438 tons, the tonnage for 1909 being 24,915, and for 1908, 28,597. The principal witness for the complainants expressed the general opinion that about one-half of the total movement from Retsof to Chicago was by all-rail routes. When asked why this should be the case, in view of the assertion that the all-rail rate gave cheaper transportation, the explanation made by counsel for the complainants was that traffic by the lakes enjoyed the privilege of free storage for an extended period in the warehouses of the boat line at Chicago, and that it was necessary to ship by lake to relieve the mine in periods of overproduction. The treasurer of the Morton Salt Company, in a letter filed of record, states that—

This salt was shipped by water for the double purpose of relieving the mine and supplying storage facilities for the product, which facilities we have at the docks; we have no adequate facilities for the storage of salt received by rail.

The storage at Chicago is a privilege attached to the lake rate and is undoubtedly an advantage to the complainants; it is of sufficient value, together with the rate itself, actually to divert a very substantial part of the through tonnage to that route. And in view of the extent of the complainants' own tonnage by water under the

advantages afforded by that route, it is difficult to comprehend their contention that the 10-cent rate should be accepted as a normal rate. The complainants lay stress upon the fact that there is no increase in the rail rate during the period when navigation is closed. But their own testimony shows that the free storage at Chicago virtually extends the effect of water competition through the winter months. It is clear, therefore, that the defendants are correct in saying that the effect of any increase in the Chicago rate would be to divert from them even more of the salt tonnage from Retsof than now moves by the competing lake-and-rail route.

In support of their contention that the rail rate offers cheaper transportation, the chief witness for the complainants asserts that it costs \$2.25 per net ton, which is equivalent to 11½ cents per 100 pounds, to move salt by the lake-and-rail route from Retsof to Chicago loaded on the cars at the dock, and \$2.60 per ton or 13 cents per 100 pounds, when delivered at the Union Stock Yards. He stated the factors entering into the latter through charge, as follows:

	Per net ton.
Rail rate, Retsof to Buffalo.....	\$0. 80
Handling charge to boat at Buffalo.....	. 25
Water rate, Michigan, Indiana & Illinois Line, to Chicago, including unloading, storage for not exceeding eight months, and insurance.....	1. 10
Handling from docks into cars at Chicago.....	. 10
Switching charge from docks to stockyards, approximately .....	. 35
Total.....	2. 60

We are not advised as to who performs the handling service from the cars to the boats at Buffalo. But assuming that it is done by the boat line, it will be observed that the only factor in this computation in which the complainants have no direct or indirect interest is the switching movement from their Chicago docks to the stockyards. There is a relation between the complainants and the Genesee & Wyoming Railroad Company, the initial carrier in the movement of salt to Chicago, as will be explained in more detail hereafter. That company evenly divides the 80-cent rate to Buffalo with the Erie. The complainants own the water line to Chicago and own the storage docks, as stated. In all these parts of the transportation service and in the privileges and facilities attending it the complainant interests through their subsidiary corporations are earning revenues on their own traffic. When it is said that the lake line is a common carrier and open to all salt shippers, the complainants overlook the natural disinclination on the part of the Sterling Salt Company and other independent shippers, very definitely expressed in the record, to forward their product over a water line that belongs to a competitor, unloading it on a competitor's dock, and storing it in a com-

petitor's warehouse at Chicago. As a matter of fact all the salt that moves to Chicago by water apparently belongs to the complaining interests. Not only is it clear, therefore, that the rail-and-lake route substantially competes with the all-rail route and forces the 10-cent rate to Chicago, but it is no less clear that the interests represented by the complainants are the only ones that get the benefit and advantage of that route.

Furthermore, the defendants insist that the lake-and-rail rate that forces down their all-rail charge on coarse salt in bulk to 10 cents is really only \$2.10 per net ton. In arriving at this figure they use the same factors that were given by the chief witness for the complainants, with the exception of the \$1.10 rate of the Michigan, Indiana & Illinois Line. This they discard in favor of a charge of 45 cents which they contend represents the cost of chartering tramp steamers for the movement of such salt from the docks at Buffalo to the docks at Chicago; and they add 25 cents to cover the cost of handling from the boat into the cars at Chicago. It will be observed that 45 cents is the charge paid by the Michigan, Indiana & Illinois Line when chartering the boats of the Retsof Mining Company, as heretofore stated. The estimated charge of \$2.10 a ton for lake-and-rail movements is equivalent to 10½ cents per 100 pounds and covers the transportation of the salt from the mines at Retsof to the Union Stock Yards at Chicago. The defendants contend that it fairly represents the reasonable cost of that transportation. But even accepting the complainants' figures as correct, the defendants suggest that the cost of the water movement is but 11½ cents per 100 pounds, which includes free storage for an extended period at Chicago and other privileges, as against their standard 14-cent-rate basis to Chicago, which does not include any storage.

Moreover, in giving the figures as to the cost of the rail-and-lake movement, the complainants' witnesses have overlooked a through rate of 6½ cents per 100 pounds to the Union Stock Yards from Buffalo, applying only over the Michigan, Indiana & Illinois Line, in connection with switching carriers at Chicago. This rate is published in a committee tariff and is equivalent to \$1.25 per ton. Using it in connection with the 80-cent rate from Retsof to Buffalo and the overhead charge at that point, the combination rail-and-water rate from Retsof to Union Stock Yards would be \$2.30 per ton, or approximately 11½ cents per 100 pounds, including the valuable privilege of free storage for eight months and the further privilege of mixing, packing, and repacking while on the docks at Chicago. An examination of our files also discloses a tariff published by the Michigan, Indiana & Illinois Line itself, but not in force at the present time, that named a rate of \$1.20 per ton

on bulk salt from Buffalo to the Union Stock Yards, with the same storage and other privileges at Chicago.

From this review of the facts we find the competitive character of the 10-cent rate to Chicago clearly demonstrated; and we find that the competitive conditions that fix that rate grow out of the relations between the Retsof Mining Company, the International Salt Company of Illinois, the Morton Salt Company, and the Michigan, Indiana & Illinois Line, and their ownership and control of the facilities of transportation from Buffalo to Chicago, including as an important element the docks and warehouses at the latter point. Moreover, the record convincingly shows that if these salt interests should discontinue the operation of their boat line from Buffalo, and if the dock facilities at Chicago became available under reasonable conditions to all shippers, the tramp steamers would still present a vigorous competition that would compel the maintenance of a reduced rate by rail to Chicago. This is clearly shown by the force of the water movement to Milwaukee and other lake ports where tramp steamers are now able to land their cargoes of bulk salt and actually carry a substantial tonnage. That such competitive conditions do not exist at intermediate points seems to be shown by the fact that under their present adjustment of rates the rail carriers apparently retain the whole movement to such points.

We attach no importance to the fact that Hammond and Hegewisch, which are not on the lake, are given the benefit of the Chicago rate of 10 cents. They are substantially Chicago-rate points, and can be reached by a comparatively short switching movement from the docks at South Chicago. There is no longer a considerable traffic to those points. Furthermore, it appears that the Chicago rate was originally extended to those destinations at a time when tramp steamers were taking salt from Buffalo at as low a charge as 25 cents per ton.

The real issue, therefore, is whether the circumstances justify the continuance of the present relative adjustment of rates as between Chicago and intermediate stations. We think the answer to this question is plainly written on the record. The circumstances heretofore described clearly justify an exception in this case to the long-and-short-haul principle. There may be particular destinations in this territory to which the rates on salt ought to be reduced; and it may be that upon a more complete record some of the rates might appear to be unreasonable. There are also certain destinations beyond Chicago where the present through rates on coarse salt in bulk are said to exceed the combination of the 10-cent rate to Chicago plus the local rate beyond. In any such case a readjustment ought, of course, to be made. But it is not necessary at this time to

enter any order in that regard. Looking at the case as a whole and upon the facts disclosed of record we are convinced that the complaint is without merit.

We have already mentioned briefly the Genesee & Wyoming Railroad Company, on whose railroad, which is approximately 16 miles in length, the mines at Retsof are situated. Out of the rates on salt to destinations in Central Freight Association territory it receives a division exceeding 2 cents on the average. Fully 95 per cent of its traffic is salt manufactured by the Retsof Mining Company, which, as heretofore stated, is subsidiary to the International Salt Company of New Jersey. The president of the latter company is president also of the Genesee & Wyoming Railroad Company; and the principal officers of the two companies are the same. A majority of the directors of the railroad company are directors in the salt company; and a majority of the capital stock of the railroad company was until recently held by stockholders in the International Salt Company. The knowledge of these facts naturally led us to make some inquiry into the relation between the companies. We are advised by witnesses who appeared for the complainants and for the Genesee & Wyoming Railroad Company, and who definitely assured us of their knowledge of the facts, that there is no identity of ownership in the railroad and salt mining enterprises, except that a minority of the stock of the railroad company is at the present time held by persons who are interested in the salt companies. We accept these statements at their face value, and make no comment beyond saying that the Genesee & Wyoming Railroad Company absorbs a generous proportion of the revenues accruing from the transportation of Retsof salt.

Since the oral argument a formal complaint has been presented by the Colonial Salt Company and nine other manufacturers of salt, who compete with the complainants herein. The petitioners allege that the Michigan, Indiana & Illinois Line and the Ludington Transportation Company are controlled by the interests that are represented by the complainants herein, and that they are operated for the benefit of those companies. These questions are also involved upon this record, and it had been our intention to give them some consideration. But in view of the new complaint in which they are specifically involved, those matters will be reserved for investigation hereafter.

From the conclusions here expressed it follows that the complaint must be dismissed. It will be so ordered.

No. 3406.

INTERNATIONAL SALT COMPANY OF ILLINOIS, COM-
PLAINANT, AND MORTON SALT COMPANY, INTER-
VENER,

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted February 27, 1911. Decided March 14, 1911.

Reparation on shipments of coarse salt in bulk from Retsof, N. Y., to Detroit, under a rate of 11 cents, subsequently reduced to 7.8 cents under an order by this Commission finding the former rate to be discriminatory, denied on the ground that the complainant has not shown that it was damaged, all competing shippers to Detroit from the same salt field having paid the same rate. *Delray Salt Co. v. P. R. R. Co.*, 18 I. C. C. Rep., 259, distinguished.

John B. Daish and *John C. Howard* for complainant, and Morton Salt Company, intervener.

Henry Wolf Bikelé for Pennsylvania Railroad Company and its affiliated lines.

H. A. Taylor and *T. H. Burgess* for Erie Railroad Company and Chicago & Erie Railroad Company.

Edgar H. Boles for Lehigh Valley Railroad Company.

J. E. Seager and *H. B. Wallace* for Delaware, Lackawanna & Western Railroad Company.

W. E. McCornack for Detroit Salt Company, intervener.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The complainant alleges that a rate of 11 cents per 100 pounds formerly maintained by the defendants for the transportation of coarse salt in bulk in carloads from Retsof, in the state of New York, to Detroit, in the state of Michigan, was unreasonable to the extent that it exceeded the present rate of 7.8 cents per 100 pounds. Reparation is demanded in the sum of \$3,734.36 upon about 150 carloads that moved between those points during the period from July 15, 1908, to June 6, 1910.

The complainant practically rests its case on our decision in *Delray Salt Co. v. P. R. R. Co.*, 18 I. C. C. Rep., 259, where the Commission held that inasmuch as the rate of 14 cents on evaporated salt from Cuylerville, in the state of New York, to Chicago had been scaled on the percentage basis to Detroit, there was no reason, so far as the record disclosed, why the current rate on coarse salt in bulk from Cuylerville to Chicago should not also be scaled to Detroit on the 78-per-cent basis. The rate then current on coarse salt in bulk was the present rate of 10 cents. The order as entered gave the defendants the option for the future of raising their rate to Chicago from 10 cents to 14 cents and leaving their rate to Detroit unchanged, or of continuing to maintain their 10-cent rate to Chicago and in that event to scale it back to Detroit on the 78-per-cent basis to a rate of 7.8 cents per 100 pounds. The defendants preferred to accept the latter alternative for the reason, brought out very clearly in *International Salt Co. of Ill. v. G. & W. R. R. Co.*, 20 I. C. C. Rep., 530, that an advance in their 10-cent rate to Chicago would have resulted in a diversion to the lake-and-rail routes of a substantial part of their very extensive all-rail movement to that point. They therefore concluded to reduce the rate on their small movement of salt from Cuylerville to Detroit to 7.8 cents per 100 pounds; and this rate was made effective also from Retsof and other points in western New York. Reparation amounting to \$273.74 was awarded on the past shipments of the complainant, on the general ground that under all the circumstances there shown of record, and in view of the 10-cent rate from Cuylerville to Chicago, a reasonable rate to Detroit would have been 7.8 cents per 100 pounds.

With that case before it as a precedent, and in view of the fact that Retsof is within a few miles of Cuylerville and therefore ought to and ordinarily does take the same rate adjustment, the complainant in this proceeding also demands reparation on its movements of coarse salt in bulk from Retsof to Detroit, while the 11-cent rate was still in effect. We find little difficulty, however, in distinguishing the two cases. The Delray company was a manufacturer of and dealer in evaporated salt at Detroit. In order to meet a constantly increasing demand by the trade for mixed carloads of different kinds and grades of salt, and in order to compete with the complainant in this proceeding in the sale of mixed carloads in the markets reached by both, the Delray company required some rock or coarse salt. This is bought at Cuylerville; but, as indicated by the amount of reparation awarded, the traffic from the latter point to Detroit was not extensive. For the shorter haul from Cuylerville to Detroit it was required to pay 11 cents per 100 pounds, while the complainant in this case at the same time was paying but 10 cents to get its coarse salt from Retsof to Chicago by rail. The two com-

panies, it will be noted, were not competing with one another at Detroit, but in the markets beyond Detroit, and on an unequal basis of rates. Having already the advantage of a 10-cent rate on coarse salt to Chicago for competition in the markets beyond, while the Delray company, competing in the same markets, was paying 11 cents to Detroit, the complainant here had not objected to the 11-cent rate to Detroit. There was, in fact, no reason why it should have complained of that rate, because its salt mined at Retsof was competing at Detroit only with the rock salt mined at Cuylerville and other points in the same field; and all these mines were paying the same 11-cent rate and now pay the same reduced rate of 7.8 cents to that point.

As the Delray company was not doing business at Cuylerville but at Detroit, it was damaged by the 11-cent rate to Detroit, for it had to use that rate in its competition in the markets beyond Detroit reached by this complainant under a 10-cent rate to Chicago. We therefore held that the 11-cent rate from Cuylerville to Detroit was discriminatory when compared with the 10-cent rate from Cuylerville to Chicago. But the complainant in this proceeding was the shipper that was shown in that case to be getting the benefit of the 10-cent rate to Chicago, and was the competitor complained of by the Delray Salt Company. The particular element of damage there shown is therefore altogether lacking in this proceeding. This complainant was competing in Detroit, not with the Delray Salt Company, but with the Cuylerville mines and the mines elsewhere in the same salt field in western New York, all of which then had and now have the benefit of the same rate to Detroit. It seems reasonably clear therefore that the complainant here shipped as much salt to Detroit under the 11-cent rate as it could have shipped under the rate of 7.8 cents if that rate had been in effect from all the competing points in western New York. The complainant here, never having found any objection to the 11-cent rate to Detroit demanded of it and all of its rock-salt competitors in that salt field, seeks now to come in under *Delray Salt Co. v. P. R. R. Co.*, *supra*, and secure the benefit, on its past shipments to Detroit, of our finding in that case. But the two cases are altogether different. In that case the complainant showed the discrimination or disadvantage to it in competing in the markets beyond Detroit on the 11-cent rate as against the 10-cent rate to Chicago. In this case all of the rock-salt producers in the salt field in question were reaching and now reach Detroit on an equal basis. The element of discrimination or of any damage arising out of discrimination is therefore lacking. As was said in *Parsons v. C. & N. W. Ry Co.*, 167 U. S., 447, at page 460—

The only right of recovery given by the interstate commerce act to the individual is to the "person or persons injured thereby for the full amount of

20 I. C. C. Rep.

damages sustained in consequence of any of the violations of the provisions of this act." So, before any party can recover under the act he must show not merely the wrong of the carrier, but that that wrong has in fact operated to his injury.

It will be observed that in *International Salt Co. of Ill. v. G. & W. R. R. Co.*, *supra*, which was heard with this case and ought to be read in connection with this report, we found the 10-cent rate to Chicago to be the result of competition of the rail-and-lake lines. Neither in that case nor in this do we deal with the question of the reasonableness of the rates *per se*; and our conclusions here are based on the special facts shown of record.

The complaint is without merit and must be dismissed.

20 I. C. C. Rep.

No. 2992.

PLATTEN PRODUCE COMPANY

v.

KALAMAZOO, LAKE SHORE & CHICAGO RAILWAY
COMPANY ET AL.

Submitted September 2, 1910. Decided April 3, 1911.

Upon the facts disclosed at the rehearing of this case; *Held*, That the initial carrier herein, and not an intermediate carrier as found in the original case, is responsible for the misrouting; that reparation be awarded against all the defendants because of an overcharge on this shipment; but that complainant is not entitled to recover in this proceeding for the icing charges which it was compelled to pay.

George A. Platten for complainant.

H. J. Schmiel for Kalamazoo, Lake Shore & Chicago Railway Company.

Howard Streeter for Pere Marquette Railroad Company.

William Ellis and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION ON REHEARING.

PROUTY, Commissioner:

This case stands for disposition upon rehearing. The shipment was one carload of grapes moving from Paw Paw, Mich., to Green Bay, Wis., and the route of the movement was via the Kalamazoo, Lake Shore & Chicago Railway and the Pere Marquette Railroad from Paw Paw to Chicago, and via the Chicago, Milwaukee & St. Paul Railway from Chicago to Green Bay. The claim of the complainant is that the shipment should have moved via car ferry across Lake Michigan to Milwaukee and that in sending it around by Chicago the defendants were guilty of misrouting.

In the original opinion, 18 I. C. C. Rep., 249, it was held that the Pere Marquette had misrouted the shipment in sending it via Chicago instead of across the lake by its car ferry to Milwaukee. After the publication of that report the Pere Marquette company filed its petition for a rehearing, alleging that the waybill under
20 I. C. C. Rep.

which it received the shipment from the Kalamazoo, Lake Shore & Chicago Railway Company contained express instructions to send the same via Chicago, and that therefore the Kalamazoo Company and not the Pere Marquette was responsible for the damage consequent upon the misrouting. Without inquiring whether the Pere Marquette had been in the exercise of due diligence in not presenting this evidence upon the former hearing, it seemed best to grant a rehearing, and such rehearing has accordingly been had.

The weight of the shipment was 24,944 pounds. Charges were assessed and paid by the complainant upon a minimum of 33,000 pounds, at a rate of 65 cents, aggregating \$214.50, in addition to the icing charges. It seems to have been assumed in originally disposing of the case that the 65-cent rate was the published rate applicable by the route over which the car moved, but an examination of the tariffs shows that such was not the case. There was no joint through rate via that route, but the rate from Paw Paw to Chicago was 18 cents per 100 pounds, and the rate from Chicago to Green Bay was 18 cents, making a through rate of 36 cents, which should have been applied. The minimum, both to Chicago and from Chicago, was less than the actual weight, so that the proper charges would have been \$89.80 for the transportation. There is, therefore, an overcharge of \$124.70.

The lines leading from Paw Paw to Chicago claimed upon the rehearing that they had only received their tariff charges to Chicago; but while the evidence indicates that this may be so, it does not clearly appear how the total charges have been divided among the several defendants. An order for the above amount, with interest from October 1, 1909, will therefore be issued against all the defendants, who should contribute to the satisfaction of the same in such proportions that each one may retain its tariff charges.

The Kalamazoo, Lake Shore & Chicago Railway Company insisted upon the rehearing that the shipment ought to have been sent via Chicago, but we adhere, upon an examination of the entire record, to our previous holding that the car should have been routed via Milwaukee.

It appeared upon the rehearing that the Kalamazoo, Lake Shore & Chicago Railway gave express instructions to the Pere Marquette company to send the car by the route which it in fact took, and that company is therefore responsible for the misrouting. The rate via Milwaukee was 33½ cents, 2½ cents less than via the route which the shipment took, which makes a difference in charges of \$6.24. This sum, with interest from October 1, 1909, the complainant is entitled to recover of the Kalamazoo, Lake Shore & Chicago Railway Company, the initial carrier.

Upon the evidence as it now stands we must modify our original decision as to the icing charges. The shipping receipt contains directions given by the consignor to keep this car iced. A consideration of the length of time which would ordinarily be occupied in moving the car via Milwaukee indicates that one icing would hardly have been sufficient even by that route. The record does not show that, had the car been promptly handled, more ice would have been required via Chicago than via car ferry to Milwaukee. The car was in fact iced at four different points, and it is evident there was unusual delay in handling it; but the damages due to this are not of the character which this Commission can award. We therefore hold that the complainant is not entitled to recover in this proceeding with respect to the icing charges which it was compelled to pay. It appeared that it has now entered against the Chicago, Milwaukee & St. Paul a suit for negligence in the handling of this car, and these damages are properly recoverable in that or some similar proceeding, if at all.

An order will be entered accordingly.

20 I. C. C. Rep.

No. 3135.

PACIFIC COAST BISCUIT COMPANY

v.

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY
ET AL.

Submitted November 7, 1910. Decided April 4, 1911.

1. The classification of an article of commerce should be stated in terms which the shipping public may readily understand. Tariffs are to be construed according to their language, and the intention of the framers and the practice of the carriers do not control. *Newton Gum Co. v. C., B. & Q. R. R. Co.*, 16 I. C. C. Rep., 341.
2. Upon complaint alleging improper assessment of charges on shipments of peanut roasters from Peoria, Ill., to Portland, Oreg., and Seattle, Wash.; *Held*, That, as shipped, said traffic was entitled to first class rates, and that rates of 1½ and 2 times first class applied to said shipments resulted in overcharges above the tariff rate.

Lew Anderson for complainant.

James B. Kerr for Spokane, Portland & Seattle Railway Company; Northern Pacific Railway Company; Chicago & North Western Railway Company; and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

F. V. Brown for Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation, with its principal place of business at Portland, Oreg., and branch offices at Seattle, Wash., and other points on the Pacific coast, engaged in the manufacture of confectionery, biscuit, and kindred articles, and in jobbing peanut roasters. In its petition, filed March 1, 1910, complaint is made of charges exacted by defendants for transportation of certain less-than-carload shipments of peanut roasters as unjust and unlawful because based on a higher rate than that prescribed by the tariff. Reparation is asked.

Eleven shipments of peanut roasters were made by complainant from Peoria, Ill., nine of them to Portland, Oreg., and two to Seattle,

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Wash., all of which moved between October 16, 1908, and December 19, 1909. The roasters were of three different styles, named, respectively, "Boss on Wheels," "Celebrated Rival," and "Nickel Mint." The first is constructed entirely of metal. The other two are constructed principally of metal, but each has a glass case in a wood frame, used partly to preserve warmth in roasted peanuts, and partly as a show case. The glass case is readily detachable from the "Celebrated Rival," but it can not be removed from the "Nickel Mint" without danger of injury to the machine except by a skilled mechanic. As shipped, the wheels, axles, springs, and other detachable parts, including the glass case of the "Celebrated Rival," in so far as would conduce to economy of space, were removed from the bodies of the machines, and the parts were packed and boxed or crated separately from the bodies.

The aggregate weight of the shipments was 7,175 pounds, and charges were exacted at a double first class rate of \$6 per 100 pounds on the first shipment, and at a rate of $1\frac{1}{2}$ times first class, or \$4.50 per 100 pounds, on the other shipments, amounting in all to \$333.14. Complainant asserts that the first class rate of \$3 per 100 pounds should have been applied under a reasonable construction of the tariffs.

Western classification in effect October 17, 1908, when the first shipment moved, and to which defendants were parties, provided the following ratings on peanut roasters:

Roasters, peanut, including roasters mounted on wheels and propelled either by hand or horse power:

S. u. [set up]—Not boxed or crated, $3\frac{1}{2}$ times first class; boxed or crated, double first class.

Completely k. d. [knocked down] and crated first class.

Subsequent issues of the classification, in effect when the later shipments moved, modified the foregoing rate basis as follows:

Roasters, peanut, including peanut roasters, corn poppers, and candy wagons combined:

S. u. [set up]—Not boxed or crated, $3\frac{1}{2}$ times first class; boxed or crated, $1\frac{1}{2}$ times first class.

Completely k. d. [knocked down] and crated, first class.

Under Trans-Continental Freight Bureau tariffs in effect when the several shipments moved, peanut roasters were subject to class rates; and the rates from Peoria, Ill., to Portland, Oreg., and Seattle, Wash., were as follows: First class, \$3; $1\frac{1}{2}$ times first class, \$4.50; and double first class, \$6 per 100 pounds.

Complainant contends that the shipments in question were "completely knocked down," and therefore entitled to the rate of \$3 per 100 pounds. Defendants contend that to meet the requirement the

manufactured article must have all its parts detached and packed flat, even though to separate and so pack the parts would injure or destroy the article. In other words, if the article be so manufactured that some of its parts can not be detached, while others may be, without injury or destruction of the article itself, all the parts must nevertheless be removed, or the article can not be regarded as "completely knocked down," and must be rated as "set up." The western classification contains no definition of the term "completely k. d." as applied to peanut roasters. The term is used as to numerous other articles in the classification, such as furniture and agricultural implements. The terms "k. d." (knocked down) and "k. d. flat" (knocked down flat) are also frequently so used. The difference in meaning, if any, between "completely k. d." and "k. d. flat" is not stated. The classification affords no means of determining the difference between those terms, and the application of rates thereunder is apparently a matter within the discretion of the inspector who examines the shipment. In this respect the classification is ambiguous and confusing.

Neither of the machines involved in this case could be so taken apart as to bring it within the meaning of the term "completely k. d.," as interpreted by defendants, without injury to the machine and probable destruction of some of its parts. And yet it was not questioned at the hearing that the "Boss on Wheels" was "completely k. d.," though the evidence showed that only the wheels, axles, and springs were removed from the body. Moreover, the Northern Pacific Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company expressly admit in their answers that, with the wheels, axles, and springs removed and packed separately, the "Boss on Wheels" was "completely k. d." within the meaning of the classification. As to the "Celebrated Rival," the same defendants also admit in their answers that, with the wheels, axles, springs, and glass case removed, if the glass case were "packed flat inside," that machine also would be "completely k. d.," though the interior mechanism were not detached from the body. It thus appears that the interpretation by some of the defendants themselves is not in harmony with their contention at the hearing, which fact only serves to emphasize the statement already made that the terms used in the classification are ambiguous and confusing. If defendants' interpretation were accepted, compliance with the requirement would be practically impossible as to any of the roasters here involved. Especially would this be true of the "Celebrated Rival" and "Nickel Mint." The glass case of each would have to be knocked down and packed flat, which could not be done without breaking joints which are glued together and perhaps destroying parts of the frame which holds the glass.

It is not just or fair to the shipping public to promulgate as a basis for determining rates a classification the terms of which are indefinite or impracticable of application, either in whole or in part. Shippers must necessarily be more or less misled thereby, and any effort on the part of carriers to apply the classification by a lax interpretation thereof must result in inextricable confusion. The classification of an article of commerce should be plainly and clearly stated in terms that the shipping public may readily understand. Tariffs are to be construed according to their language, and the intention of the person who framed the tariff, or the arbitrary practice of the carriers thereunder may not be looked to as authoritative construction thereof. *Newton Gum. Co. v. C., B. & Q. R. R. Co.*, 16 I. C. C. Rep., 341.

Under all the circumstances, our conclusion is, and we find, that the shipments in question were fairly entitled to the first class rate of \$3 per 100 pounds under the classification. Further, we find that the charges exacted upon these shipments constituted overcharges above the tariff rates so far as they exceeded charges which would have accrued under the first class rate, and that defendants should refund to complainant, without the requirement of an order of the Commission, the sum of \$117.89, with interest from December 18, 1909. Upon receipt of satisfactory evidence that refund of the overcharge has been made, the complaint will be dismissed. It is assumed that defendants will proceed promptly to so amend their classification as to make definite and unmistakable provision for application of the various rates here in question.

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No. 3449.

W. J. SCHEUING

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted January 20, 1911. Decided April 4, 1911.

1. The fact that for a long time there had been no movement of a particular commodity is no justification for the maintenance of an unreasonable rate; neither is the probable effect of state prohibitory laws upon the tonnage.
2. Defendant's rate of 56½ cents on bottled beer, in casks, carloads, from St. Louis, Mo., to Cullman, Ala., found to be unreasonable and rate of 37 cents prescribed for future. Reparation awarded.

Emil Ahlrichs for complainant.

N. W. Proctor for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a dealer in bottled beer, soda water, and tobacco, with place of business at Cullman, Ala. By petition filed August 4, 1910, he alleges that he was charged by defendant an unreasonable rate for the transportation of a carload of bottled beer in casks from St. Louis, Mo., to Cullman, Ala. He also alleges discrimination against Cullman in favor of Birmingham and violation of the long-and-short-haul provisions of the act. Reparation and the establishment of a reasonable rate for the future are asked. At the hearing complainant submitted evidence showing the movement of three carloads of bottled beer between the points in question, and his prayer for reparation was amended to include the two additional cars.

The shipments, aggregating 74,000 pounds of bottled beer, moved between June 28 and September 1, 1910. One of the cars also contained advertising matter, hardware, signs, etc., weighing 247 pounds, upon which charges were collected in the sum of \$2.52. Based on class-E rate of 56½ cents per 100 pounds, in carloads, freight charges amounting to \$418.10 should have been imposed on the beer. The amount actually collected, however, was \$420.10, an overcharge of \$2.

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From St. Louis defendant's line extends southeast through Decatur and Cullman to Birmingham. The distance to Decatur is 446 miles, to Cullman 478, and to Birmingham 532. Decatur is a junction of defendant's road and the Southern Railway; Cullman is located only on line of defendant, while Birmingham is the point of convergence of many lines. There is no commodity rate in effect to Cullman and the class rate of $56\frac{1}{2}$ cents applies. To Decatur, 32 miles north of Cullman, and to Birmingham, 54 miles south of Cullman, a commodity rate of $30\frac{1}{2}$ cents, carload minimum 24,000 pounds, is effective.

Although intermediate to Birmingham as to traffic from St. Louis via defendant's line, Cullman is not intermediate via any of more than 15 other available routes to Birmingham. The short-line mileage from St. Louis to Birmingham is 478 miles, made by the Mobile & Ohio Railroad. Besides the defendant, the Illinois Central, Southern, St. Louis & San Francisco, and Mobile & Ohio all reach Birmingham over their own or leased rails. Birmingham is an active commercial and industrial center, carrier and market competition is keen, and the rate to that point is influenced by many conditions not obtaining at Cullman. Defendant has filed with this Commission its application for relief under the fourth section of the act as amended, and pending action upon that application, which embraces the present rate adjustment between Birmingham and Cullman, the long-and-short-haul feature of this case will not be further considered. Cullman and Birmingham do not compete in the sale of beer in intermediate territory, and complainant stated that he was not damaged by the lower rate to Birmingham. He further stated that if that rate were raised to equal the present Cullman rate his complaint would not be satisfied. On the facts of record we are not prepared to say that Cullman is unduly prejudiced to the advantage of Birmingham.

It remains, then, to consider the reasonableness of the $56\frac{1}{2}$ -cent rate to Cullman. As stated, the rate from St. Louis to Decatur is $30\frac{1}{2}$ cents. The rate from Decatur to Cullman is 17 cents, making the combination of intermediate rates $47\frac{1}{2}$ cents as against the joint class rate of $56\frac{1}{2}$ cents. In its brief defendant stated that it would publish a rate of $47\frac{1}{2}$ cents from St. Louis to Cullman. It contends that competitive conditions at Decatur are similar to those at Birmingham and that most of the lines competing for Birmingham business from St. Louis also compete for Decatur business. However, it could be said with equal force that any routes from St. Louis to Decatur could be easily extended to Cullman via defendant's line. The short-line mileage to Decatur is 407 miles, made by the Mobile & Ohio to Corinth, Miss., and the Southern Railway beyond. Via the line of defendant the distance is 446 miles, only 39 miles greater, and

the entire haul is performed by its line. The rate of 30½ cents to Decatur via defendant's line produces revenue of 1.36 cents per ton-mile; the rate of 56½ cents to Cullman produces revenue of 2.36 cents per ton-mile; and to Birmingham the 30½-cent rate produces revenue of 1.14 cents per ton-mile.

Commodity rates on beer from St. Louis are applicable to a number of Alabama points. Alabama City, a station on the lines of defendant, Nashville, Chattanooga & St. Louis Railway, Alabama Great Southern Railroad, and Southern Railway, between 65 and 70 miles farther east than Birmingham, takes a commodity rate of 35½ cents; Anniston, Ala., on the lines of defendant and the Southern Railway, 99 miles farther east than Birmingham, a commodity rate of 35½ cents; Opelika, Ala., on the Central of Georgia Railway and the Western of Alabama, 129 miles farther southeast than Birmingham, a commodity rate of 40 cents. While these points are all located on the lines of more than one railroad and certain elements of competition may exist, the haul is from 100 to 200 miles farther than the haul to Cullman, and in some instances is performed by more than one line.

Defendant stated that there had been almost no movement of beer in carload quantities from St. Louis to Cullman and that therefore no commodity rates had been established. At the hearing and in its brief it laid great stress upon the Alabama statute which prohibits the sale of beer within the state. It argued that no appreciable tonnage in this commodity could be expected to move into Alabama because beer for private consumption would rarely be ordered in carload quantities, and its reshipment to points without the state was almost as effectively prohibited by the resulting freight charges. Great anxiety was also manifested lest the Commission, by reducing the rate to Cullman, might aid and abet a violation of this statute. It doubtless overlooked the fact that a similar construction might be placed on its own action in giving favorable rates to Decatur and Birmingham. However, a shipper is entitled to have his interstate freight moved at reasonable rates. To regulate these rates is our function; to enforce state laws, the duty of the state. The fact that for a long time there had been no movement of a particular commodity is no justification for the maintenance of an unreasonable rate. Neither is the probable effect of state prohibitory laws upon the tonnage material.

In the absence of commodity rates, beer moves upon class-E rates in southern classification territory. From St. Louis, Mo., the class-E rates are, to Decatur 42 cents, to Cullman 56½ cents, and to Birmingham 47 cents. No reason appears why the rate to Cullman should be relatively higher in the case of an article which is generally given a commodity rate than in the case of articles which are carried

at class rates. Allowing the same relative adjustment between Birmingham and Cullman which exists in respect of class rates, the rate on beer should not exceed 37 cents per 100 pounds.

Under all the circumstances we are of opinion and find that defendant's rate of 56½ cents per 100 pounds on bottled beer in casks from St. Louis, Mo., to Cullman, Ala., was and is unreasonable and that a reasonable rate to be charged for the future should not exceed 37 cents per 100 pounds, minimum carload weight 24,000 pounds. We are further of opinion that complainant is entitled to damages in an amount equal to the difference between the charges paid, including the \$2 overcharge, and the charges which would have accrued under a rate of 37 cents, or \$144.30, with interest from September 5, 1910.

An order will be entered accordingly.

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No. 3614.

MERIDIAN FERTILIZER FACTORY

v.

VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY ET AL.

Submitted December 9, 1910. Decided April 4, 1911.

Rates of 12½ cents and 13 cents per 100 pounds on commercial fertilizer, Shreveport, La., to Hamburg and Crossett, Ark., respectively, found unreasonable, and rate of 11 cents established for future.

S. R. Jennings for complainant.

V. Schaffenburg for Vicksburg, Shreveport & Pacific Railway Company.

T. J. Shelton for Arkansas, Louisiana & Gulf Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the manufacture and sale of commercial fertilizer, and has its principal office at Shreveport, La. By complaint, filed October 24, 1910, it attacks the reasonableness of defendants' carload rates for the transportation of commercial fertilizer from Shreveport, La., to Hamburg and Crossett, Ark.

Hamburg and Crossett, while practically equidistant from Shreveport, are about 14 miles apart, Hamburg being on the main line and Crossett on a branch of the Arkansas, Louisiana & Gulf Railway. Traffic from Shreveport to these points moves over the Vicksburg, Shreveport & Pacific Railway to Monroe, La., thence over the Arkansas, Louisiana & Gulf.

The complaint alleges that the rates from Shreveport to Hamburg and Crossett are, respectively, 12½ cents and 16 cents, and the distances 152 and 149 miles, while from Memphis via the St. Louis, Iron Mountain & Southern Railway to the same points, respectively, 218 and 230 miles distant, the rate is 13 cents, out of which the Iron Mountain pays 1½ cents per 100 pounds bridge toll at Memphis. Complainant seeks to have established rates from Shreveport that will yield defendants the same revenue per ton-mile as is received by the Iron Mountain for its haul from Memphis. On this basis the

rate from Shreveport would be 8½ cents. When the complaint was filed the rates were as alleged. By tariff effective February 20, 1911, the rate to Crossett was reduced to 13 cents. At the hearing defendants admitted that Hamburg and Crossett should take the same rates and expressed their willingness to publish the 12½-cent rate to both points. This proposed adjustment was not satisfactory to complainant, which contended for the same per-ton-mile rate as applied from Memphis. The following table shows the rates now effective and those proposed:

	Miles.	Rate.	Effective.	Revenue per ton per mile.
		Cents.		Cents.
Shreveport to Crossett	149	16	Until Feb. 20, 1911..	2.148
Do.....	149	13	After Feb. 20, 1911..	1.740
Do.....	149	12½	Proposed	1.677
Shreveport to Hamburg	152	12½	.....	1.644
Memphis to Hamburg	218	13	May 2, 1910	1.192
Memphis to Crossett	230	13	.....do	1.180

Complainant gives no consideration to the fact that the revenue per ton-mile ordinarily decreases as distance increases and that a per-ton-mile revenue reasonable for a haul of 250 miles might be too low for a 150-mile haul. Nor has the Commission ever inclined to the view that mileage is the only factor to be considered in rate adjustment. The fertilizer rates from Shreveport to Arkansas points have previously received our consideration, and in *Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co.*, 16 I. C. C. Rep., 49, we said:

Fertilizer is a low-grade traffic, subject to no great risk in transit and requiring no special service for its transportation in the sense that "special service" is generally understood. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic and thus promote the prosperity of carriers and their patrons, so that considering both commercial and transportation conditions it is entitled to comparatively low rates.

Reasonable rates were then prescribed, among others the following:

Shreveport, La., to—	Miles.	Former rate.	Rate pre- scribed.	Reve- nue per ton per mile.
		Cents.	Cents.	Cents.
Thornton, Ark.....	138.9	11	9	1.30
Fordyce, Ark.....	144.5	11	9	1.24
Kingsland, Ark.....	152.1	11	9½	1.25
Rison, Ark.....	162.1	12	10	1.23

In that case, however, the entire haul was performed by one carrier, the St. Louis Southwestern, while in the present case there is a two-line haul, the portion from Monroe to Hamburg and Crossett

being over the Arkansas, Louisiana & Gulf, a comparatively new line. In *Virginia-Carolina Chemical Co. v. St. L., I. M. & S. Ry. Co.*, 18 I. C. C. Rep., 1; *Same v. St. L. & S. F. R. R. Co.*, 18 I. C. C. Rep., 5; and *Same v. C., R. I. & P. Ry. Co.*, 18 I. C. C. Rep., 31, we established the following rates on fertilizer, minimum carload weight 30,000 pounds, from Memphis to Arkansas points, applicable in some instances over only one line, and in others over more than one line:

Distance (miles).	Rate.
	<i>Cents.</i>
100 and over 75	9
150 and over 100	10
200 and over 150	11
250 and over 200	12
300 and over 250	13

Under all the circumstances we are of opinion and find that defendants' present rates on fertilizer from Shreveport, La., to Hamburg and to Crossett, Ark., are unreasonable and excessive to the extent that they exceed 11 cents, minimum 30,000 pounds, to both points. Defendants will be required to maintain for the future a rate not in excess of 11 cents per 100 pounds, minimum carload weight 30,000 pounds, and it will be so ordered.

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No. 3701.

WILLIAM E. MOORE

v.

NEW YORK & LONG BRANCH RAILROAD COMPANY.

Submitted January 20, 1911. Decided April 4, 1911.

A carrier's tariff providing for adjustment of charges for commutation tickets lost by the owner thereof provided, among other conditions, that refund would be made only when the lost ticket had been found and returned to the proper officer of the issuing company: *Held*, That this condition is unduly discriminatory and therefore unlawful. Reparation awarded.

S. H. McLaughlin for complainant.

No appearance for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Philadelphia, Pa. His petition herein, filed December 12, 1910, puts in issue the lawfulness of defendant's regulation governing return of purchase price of commutation tickets which have been lost by the owner.

Complainant purchased from defendant on August 1, 1910, a 50-trip season ticket, Book No. 414, between North Asbury Park, N. J., and New York City, limited for use to October 31, 1910, and paid therefor \$32.20. The ticket was used for one trip from North Asbury Park to New York, then lost and never recovered. On August 2 complainant purchased another 50-trip ticket good between the same points. Defendant was notified of the loss and orders were issued directing conductors to refuse to honor any of the coupons from said ticket, and there is no evidence that they were ever presented by anyone for passage. Demand for refund was made by complainant on the defendant at the expiration of the time limit of the ticket and apparently proof of ownership and identity was satisfactory since an offer of repayment was made by defendant, provided an order of the Commission to that effect could be obtained.

Defendant has on file with the Commission a tariff, I. C. C. No. 3, in force since January 25, 1908, governing adjustment of charges for 20 I. C. C. Rep.

commutation or season tickets, which provides, among many other conditions, that refund will be made "only when the lost ticket is found and returned to the proper officer of the issuing company." The form of the ticket is such that defendant can readily protect itself against fraudulent use thereof. The purchaser's name appears on the inside cover of the book and on the coupon which is surrendered for the first trip. Upon each of the coupons is stamped the number of the book. Therefore, even if conductors should accept coupons from a person other than the purchaser, that fact can be ascertained at expiration of the time limit by defendant's accounting department. Complainant appears to have complied with all the conditions except that relating to recovery of the lost ticket.

Without at this time attempting to determine the many questions which are pending respecting the extent of our jurisdiction over commutation fares, or to say what conditions may properly be enforced in connection with the sale of tickets at reduced rates, it seems obvious that carriers may not lawfully attach to the use of commutation tickets conditions which unduly discriminate between the individual purchasers thereof. There are many cases in which recovery of a lost ticket is impossible; and in view of the fact that the carrier is protected against fraudulent use thereof by the form of the ticket, as well as the conditions relating to refund thereon, we see no sound reason for the rule here in question. It is our conclusion that it results in undue discrimination against complainant and others similarly situated and that defendant should be ordered to cease and desist from enforcing it. In the present instance we find that complainant is entitled to refund in an amount equal to the difference between the price paid for the commutation ticket and the one-way fare from North Asbury Park to New York, or \$31.35, with interest from October 31, 1910.

An order will be entered accordingly.

20 I. C. C. Rep.

No. 3489.

CRESCENT COAL & MINING COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted March 7, 1911. Decided April 3, 1911.

1. Following *Munroe & Sons. v. M. C. B. R. Co.*, 17 I. C. C. Rep., 27, and *Tioga Coal Co. v. C., R. I. & P. Ry. Co.*, 18 I. C. C. Rep., 414; *Held*, That shipper or consignee may not be required to pay demurrage charges unless the carrier's tariff provides for same in clear and specific form and manner.
2. Following *Coomes & McGraw v. C., M. & St. P. Ry. Co.*, 13 I. C. C. Rep., 192; *New York Hay Exchange Asso. v. P. R. R.*, 14 I. C. C. Rep., 178, and other cases to the same effect; *Held*, That demurrage may not be assessed except for or because of failure on part of shipper or consignee to comply with his obligations.
3. Tariffs of carrier performing the road haul name rates to Chicago, which include delivery on tracks of other carriers in the Chicago switching district, and provide that shipper or consignee shall have 24 hours free time after arrival within which, without further charge, to reconsign to such deliveries on tracks of other carriers. A carrier that is party to the tariffs containing the reciprocal switching arrangements declines to accept cars for such deliveries except at its convenience. Consignee gives reconsignment to the carrying road within the time provided in its tariff. The delivering road delays acceptance of such shipments and the carrying road thereupon assesses demurrage against the consignee; *Held*, That the consignee, having given his reconsignment order and requested delivery of shipment, is powerless to do anything except await the action of the carriers. If defendants' tariffs provide something that it is impossible for them to perform, something that they may not be reasonably required to perform, their recourse is not in the assessment against the shippers or consignees of additional charges growing out of causes in the creation of which neither shipper nor consignee has any part and over which neither of them has any control. Reparation awarded.

M. F. Gallagher for complainant.

Charles D. Clark and *James M. Sheean* for Baltimore & Ohio Railroad Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

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REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant is a corporation engaged in the sale of coal, with its principal office in Chicago, Ill. It alleges that the rules and practices of the Baltimore & Ohio Railroad Company, under which certain demurrage charges were assessed against it, are unreasonable and discriminatory, and it prays for reparation.

The complaint refers only to the demurrage charges on five carloads of coal, but it is admitted that the purpose is to test the validity of the rules and practices complained of, which have affected, and are affecting, large numbers of shipments; in fact, there is filed in the record a stipulation of the parties, which contains the following:

If it is finally determined by the Interstate Commerce Commission, or upon any appeal taken by either party from the order of the Interstate Commerce Commission to the courts, that said demurrage charges hereinbefore mentioned were not legally assessed and collected, then the said Baltimore & Ohio Railroad Company will refund all demurrage charges heretofore collected under like facts and circumstances.

The tariffs of the Baltimore & Ohio Railroad provide a stated free time after arrival of cars at Chicago within which they may be re-consigned to points beyond or for delivery upon the tracks of other railroads within the Chicago switching district. Coal billed flat to Chicago is held in a storage yard several miles from the city awaiting disposition or reconsignment orders that are given by consignees after they receive notices of the arrival of such cars.

Defendants are parties to the so-called reciprocal switching arrangement in the Chicago switching district, which has been in force for a long time and under which the roads switch for each other incoming and outgoing carload freight under established switching charges, which charges are usually absorbed in whole or in part by the carrier that gets the line haul.

For many years the railroads centering at Chicago have permitted the shipment of coal to Chicago, and the reconsignment of same after arrival without additional charge. This practice is of great service and value to the dealers in and the users of coal within the Chicago switching district. It permits economical, proper, and equitable distribution of different kinds and sizes of coal as they are needed by users thereof, and a distribution of the available supply, which would not be possible under specific billing of shipments of particular kinds and sizes to specified consignees unless such shipments were moved by the carriers without delay and in the order in which they were received for shipment. The arrangement is also doubtless advantageous in many ways to carriers. It permits the carrier that hauls coal from mines located upon its lines to reach deliveries to industries that are located upon the tracks of other carriers, and it permits the

carrier that does not haul coal from mines on its lines to induce and retain the location upon its tracks of industries that must have coal.

Defendant Chicago, Milwaukee & St. Paul Railway brings little or no coal to Chicago over its lines. Numerous coal dealers, including complainant, have coal yards located upon its tracks at which they can secure delivery of coal only under the aforementioned reciprocal switching arrangement.

On account of somewhat limited facilities and congestion the Chicago, Milwaukee & St. Paul Railway on February 22, 1907, established its so-called regulating embargo, of which its agent at Chicago sent the following notice by wire to the freight agent at Chicago of the Baltimore & Ohio Railroad:

On and after 7 a. m. February 23 this company will not accept any cars of hard or soft coal for delivery within the switching limits of Chicago terminal district except on receipt of specific notice given by this office.

On August 5, 1907, the agent of the Baltimore & Ohio wrote complainant advising it of this action having been taken by the Chicago, Milwaukee & St. Paul Railway on February 23, and requesting that his communication be considered as notice that the Baltimore & Ohio would not accept reconsigning orders for points on the Chicago, Milwaukee & St. Paul unless order was accompanied by written notice given by the last-named carrier that the car or cars would be accepted by it. He requested that such notice of acceptance accompany all orders for such deliveries.

The coal in question moved from points outside the state of Illinois. Upon arrival of same at its storage yard outside of Chicago the agent of the Baltimore & Ohio sent written notices of arrival to complainant, who thereupon directed delivery on the tracks of the Chicago, Milwaukee & St. Paul. The Baltimore & Ohio did not have written notice of the readiness of the Chicago, Milwaukee & St. Paul to accept such shipments, and it returned the reconsigning orders with advice that they could not be accepted and a request that different disposition be made. Complainant returned the instructions to the Baltimore & Ohio, and in due time notices of the readiness of the Chicago, Milwaukee & St. Paul to accept the cars was received. Thereupon, and without further instructions from or action by complainant, and without the execution of any bill of lading or other contract for carriage or shipment, the Baltimore & Ohio switched the cars to the Belt line, which, in turn, delivered them to the Chicago, Milwaukee & St. Paul, and that defendant delivered them at the coal yard. Although the reconsigning orders were given within the free time provided in the tariffs of the Baltimore & Ohio for reconsignment, that time was exceeded between the date of arrival and the date upon which the Chicago, Milwaukee & St. Paul advised

its acceptance, and the Baltimore & Ohio charged complainant demurrage.

About 90 per cent of complainant's coal is shipped to Chicago "billed flat," with the expectation of distributing it after arrival under the reconsigning privilege.

The Baltimore & Ohio offers transportation rates on coal from points on its lines to Chicago, in connection with which its tariff accords the privilege of reconsignment after arrival, 24 hours free time being allowed therefor, and provides that the switching charges of other roads in the Chicago switching district will be absorbed out of the rate to the extent of \$4 per car. If such car is reconsigned to a point on another road outside of the Chicago switching district, and if, for any cause, connecting roads do not or will not receive it, no demurrage is assessed against it. If within the period of free time allowed therefor the car is reconsigned to a point on the Chicago, Milwaukee & St. Paul line within the Chicago switching district and that road does not or will not receive it promptly, demurrage is assessed against the car.

Cars switched from the Baltimore & Ohio for deliveries on the Chicago, Milwaukee & St. Paul tracks within the Chicago switching district pass over and are handled by an intermediate belt line, and if the Baltimore & Ohio delivers to the Belt line a car for delivery on the Chicago, Milwaukee & St. Paul tracks which the Chicago, Milwaukee & St. Paul has not released and will not then receive under its embargo, the Belt line will bring it back to the Baltimore & Ohio, and the Baltimore & Ohio must pay the Belt line's charges thereon in both directions.

Formerly the rules governing demurrage and storage in the Chicago switching district were published by the manager of the Chicago Demurrage Bureau, but after it became necessary to file such rules as tariffs the individual carriers published and filed their own demurrage and storage rules which are substantially uniform for the several carriers. The manager of the Chicago Demurrage Bureau reproduces these rules, giving notice that they have been adopted by each of the carriers named; that if any individual road establishes other or different rules notice will be given to the bureau at once; and that the manager of the bureau as agent of the individual members is authorized to define the rules so that they may be enforced without discrimination. The manager of this bureau issues circulars to the carriers and their agents relative to these rules, which circulars are not given public distribution. Such a circular, No. 11, effective February 27, 1907, gave instructions for the assessment of demurrage by the holding line on cars when they were refused by the delivering line because the consignee was unable to receive or to unload same, and provided that such demurrage must not be charged in the ab-

sence of evidence that consignee was not prepared to receive the car. This circular also instructed that when cars were billed flat to Chicago care must be exercised to not accept switching orders for delivery to connections that would not receive the same. It directed that if mail orders were received for switching embargoed cars to connections, such orders should be returned at once to the senders with notice that same could not be executed on account of embargo and that demurrage would be charged for time in excess of free time allowed under the rules.

Circular No. 23, of March 26, 1910, contained new and additional instructions that if embargo prevented the execution of reconsignment order on file on arrival of car, such order must be returned immediately to the party giving same with advice that it could not be executed, and that if disposition which would move the car were not received within 24 hours from first 7 a. m. after arrival of car, demurrage would be charged.

The manager of the Chicago Demurrage Bureau testified that if a car is consigned from point of origin to a designated point on the line of another carrier in the Chicago switching district, demurrage would not be assessed upon it even though it were embargoed. He testified as follows:

Q. If the cars are billed flat to Chicago and reconsigned, demurrage will be charged unless the road to which reconsigned accepts them?

A. We do not call them reconsigned until we get an order which will move the car. That is where the difference of opinion is.

Q. Are you familiar with the individual tariffs of these roads on this question?

A. Yes, sir.

Q. Do they contain this provision that we have here that "if disposition which will move cars is not received within 24 hours demurrage will be charged?"

A. If you will let me have the rules which you had there I can tell you. Free time allowed. Twenty-four hours, one day, free time will be allowed when cars are held for reconsignment or switching order. The tariffs all have that provision in them.

Q. I understand that provision. This says "when held for reconsignment." The shipper says "I have given my reconsignment order; it is not held for me; it is not held for my reconsignment; I have given it." But your circular here says that if a disposition which will move the car is not received demurrage will be charged. If that is the interpretation of it, why should it not be in here? If that is what this reconsignment means, why doesn't it say so?

A. I never had any instructions to put that in the tariff. That is an interpretation of the rule which I was authorized to publish.

It is in evidence that the Baltimore & Ohio has assessed demurrage upon cars for which it had reconsigning orders to points on Chicago, Milwaukee & St. Paul tracks when the yard to which such cars were consigned had no cars on its tracks and was able and ready to unload them immediately upon delivery. It appears also that until some-

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what recently the question of the ability and readiness of the receiver or consignee to accept and unload a car had no influence upon the question of its release under the embargo. There is no allegation, however, that the Chicago, Milwaukee & St. Paul practiced or indulged in favoritism as between shippers, or that it used its embargo in a discriminatory way.

The freight agent of the Baltimore & Ohio at Chicago testified as follows:

Q. Suppose the North Western was to notify you of an embargo against shipments for a particular consignee on its lines; that is, that consignee was unable to receive the freight. Would you then charge demurrage or would you not?

A. I would proceed, under that circular (Chicago Demurrage Bureau circular), to charge demurrage after I had complied with the circular instructions.

Q. If the embargo were because of the Chicago & North Western's generally congested condition and inability to handle the stuff, would you charge demurrage?

A. If I knew it was the railroad's disability, I would not charge demurrage.

Complainant avers that its common-carrier obligations require the Chicago, Milwaukee & St. Paul to accept and deliver these cars, and that the common-carrier obligations of these defendants require them to interchange this traffic and to deliver it to consignees without demurrage, except such as may accrue through failure of consignee to release the car within the free time after it has been delivered to him for unloading.

The Baltimore & Ohio argues that it has performed its common-carrier obligation and has tendered delivery on its tracks and that the reconsigning privilege and absorption of switching charges in connection therewith are simply privileges which it extends to shippers or consignees. It says that it has no control over the Chicago, Milwaukee & St. Paul, can not force it to accept the cars, and therefore is entitled to assess demurrage against the shipments until such time as consignee furnishes a reconsignment that will move the car.

The Chicago, Milwaukee & St. Paul says that the provision of the act requiring carriers to afford reasonable facilities for the interchange of traffic with other lines applies to interchange of business moving in transportation service and that it does not apply to the shipments here in question because the same statute provides that a carrier shall not be required to give the use of its terminal facilities to another carrier. It contends that the delivery involved in this case involves the use of its terminals by another carrier and that it is not performance by it of a transportation service for the public. It urges that it is under a superior and binding legal obligation to deliver the freight which it has received for transportation on its own lines, and that this obligation must be fully discharged before voluntary arrangements for delivery of freight transported by other

carriers are made. It argues that in the present state of the tariffs neither the shipper nor the consignee can compel it to take this freight for delivery except when tendered to it at a regular station established for the receipt of freight, and at the regular transportation charge provided by its tariffs.

As has been seen, the Chicago, Milwaukee & St. Paul is a party to the reciprocal switching arrangement. It provides in its tariffs for the acceptance of cars for switching delivery on its tracks, and such tariffs are just as binding upon it as any other tariffs, and so long at least as those tariffs are in force we think it must accept such shipments for delivery to the extent of its reasonable capacity so to do. Whether or not it could be compelled to establish and maintain such tariffs we are not here called upon to decide.

It appears that under the embargo the Chicago, Milwaukee & St. Paul has delivered to the consignees located upon its tracks within the Chicago switching district as much coal as it could or would have delivered if the regulating embargo had not been in effect.

In November, 1910, the Chicago, Milwaukee & St. Paul was making changes in its Chicago yards and for a period of about 10 days it refused to grant releases for any of the embargoed coal. The practices have been modified so that at present the arrangement provides for the acceptance by the Chicago, Milwaukee & St. Paul each day from connecting lines of cars equal to the total unloading capacity of all of the consignees of coal located upon its terminals, and the keeping on its terminals of two full days' supply for such consignees. Under this arrangement sufficient cars are released to keep the said supply constantly moving to and into its terminals and it appears that it now effects deliveries that are substantially satisfactory to those consignees.

The Chicago, Milwaukee & St. Paul shows that most of the receivers of coal located upon its lines within the Chicago switching district are located upon an island known as Goose Island, which is in a busy part of the city where its delivering facilities are limited by physical conditions and by municipal regulations which have so far rendered it impossible to increase the track facilities on the island. It states that it established a regulating embargo as the only means of preventing hopeless congestion of its terminals through delivery to it by connections of large numbers of cars which, because of the conditions referred to, could not possibly be delivered to the consignees, thus causing a general congestion throughout all of its terminals which seriously interfered with the performance of its duty to the public and to shippers and consignees served by it in the capacity of a common carrier and not as a purely switching or delivery line. It appears that increased yard facilities and rearrangement of tracks have rendered it possible for this defendant to handle

more coal than it was able to handle in the recent past, and that in another year it will be able to handle still more. It has expended about \$800,000 on its terminal facilities within the last year.

The following appeared in the testimony of the assistant general superintendent of the Chicago, Milwaukee & St. Paul:

Q. Now, you say that if this embargo was lifted that the tender of 150 cars per day to your road for switching would cause a congestion of your terminals?

A. No, sir; I do not say that. If it were delivered regularly, 150 cars a day, it would not. It could be handled, but our experience shows it is not delivered regularly. One day we might get 25 or 40 cars, and another day we might get 350 cars. It has come to us in that way.

Q. That is largely the fault of the coal-carrying roads, isn't it, getting the coal over to you?

A. I should say entirely.

The question here is the reasonableness and lawfulness of the demurrage charges assessed by the Baltimore & Ohio. The question of the lawful right of the Chicago, Milwaukee & St. Paul to maintain a regulating embargo has not been tried and is not decided.

Complainant urges that inasmuch as the Baltimore & Ohio has established tariff rates for transportation of coal to Chicago, including the right of reconsignment within a specified time after arrival, and including switching to connections for delivery on tracks of other carriers within the Chicago switching district and the absorption of switching charges of such other carriers within a stated limit, and inasmuch as defendants are parties to the reciprocal switching arrangement in the Chicago switching district, that if complainant pays the tariff charges and furnishes reconsignment order within the free time allowed, it has not only preformed its duty but has done all it possibly can do, and that it is unlawful and unjust to charge it demurrage because the carriers are unable or unwilling to perform the service contemplated by their tariffs.

The Baltimore & Ohio contends that its tariff rate is for carriage of the shipment to Chicago, that the reconsignment privilege is merely a privilege which it extends to the shipper, as is also its service of switching to connections for delivery on the tracks of other railroads and its absorption of the switching charges. It argues that when complainant gives reconsigning order for delivery on tracks of some other carrier such connecting carrier thereby becomes the agent of complainant and not the agent of this defendant, and therefore it is complainant's duty to make arrangements with other carriers under which complainant's reconsigning order can be executed within the time provided, or to pay demurrage for all delays beyond that time.

The Chicago, Milwaukee & St. Paul insists that its service is not performed for or at the instance of either the shipper or consignee, that the consignee directs the carrying road where to deliver the car,

and that it is moved only upon order of the carrying road. It argues that if after delivery to it by the carrying road the shipper or the consignee desired to change the destination or consignee of the car such order would have to be given to the carrying road, and the only direction which it, as the delivering line, could properly recognize concerning the movement must come from the carrying road. It contends therefore that the service performed by it is for the carrying road and not for the shipper or consignee, and that payment for its services is made by the carrying road and not by the shipper or consignee. It argues that the carrying road having failed to provide terminal facilities necessary to the transaction of all of its business uses as its facilities the terminals of other carriers, and that such other carriers are the agents of the Baltimore & Ohio and not of the shippers or consignees of shipments so handled.

When asked to designate the tariff authority for assessment of demurrage under the circumstances recited the Baltimore & Ohio referred to certain tariff rules fixing the rate per day for demurrage and free time periods, but the only rule referred to that could be depended upon as justification for assessment of the demurrage here in question was that reading as follows:

Cars held for consignors or consignees for loading, unloading, forwarding directions, or for any other purpose, are subject to the following car service rules.

Obviously, the words "or for any other purpose" apply only to cars held by consignors or consignees. They can not mean that demurrage can be assessed against a shipper or consignee unless cars are held by him for some purpose of his own. These words limit the charge to cases in which cars are held awaiting action by the consignee or shipper, such as loading or unloading, the giving of forwarding or delivery directions, the payment of freight, etc. They can have no reference to a case where a car is held awaiting its acceptance by a connecting or switching line when it is detained through no fault or desire of consignee or shipper.

The Baltimore & Ohio argues that if complainant does not give a reconsigning order under which some other carrier will accept the car, the car is held by it for complainant, and therefore is subject to demurrage. Complainant replies that it has complied with all of the tariff requirements, has given reconsignment, has no control of the operations of connecting carriers and is not responsible therefor, and demurrage can not therefore be lawfully assessed against it.

It appears that in some instances after complainant has been advised that notice of acceptance of certain cars consigned to Chicago, Milwaukee & St. Paul delivery had not been received, different disposition was directed and the cars were sent to other destinations, but apparently they were simply incidents in complainant's business

under which, on account of orders or arrivals, some other disposition was satisfactory to it.

It has been seen that there is no contract between the consignee or shipper and the belt line or the delivering road. The movement from the Baltimore & Ohio tracks to the Chicago, Milwaukee & St. Paul tracks is provided for in defendants' tariffs and is paid for by the Baltimore & Ohio out of the charges paid to it by the shipper or consignee. If a bill of lading were executed would it be held that demurrage could be charged against the shipper or consignee after the execution of bill of lading and pending the acceptance of the car by a connecting line? These shipments are made from points of origin on the Baltimore & Ohio, subject to its tariff charges and entitled to the privileges offered in connection therewith. The consignee having given the reconsigning order within the free time allowed has done all that lies in his power to secure the transportation of the car to the destination covered by the defendants' tariffs. How can it be held liable for demurrage caused by refusal or neglect of defendants to perform the service which their tariffs bind them to perform?

Obviously, if the deliveries at the yards on the Chicago, Milwaukee & St. Paul tracks were not provided for in, and were not accomplished under, the provisions of the tariffs, the service of the Baltimore & Ohio would be of no value to these shippers, and few if any of their shipments would come from points on its lines. What they want is delivery at their yards on the Chicago, Milwaukee & St. Paul tracks, and that is what the Baltimore & Ohio, through its own tariffs and through reciprocal arrangements with other carriers, including the Chicago, Milwaukee & St. Paul, undertakes to provide.

It is alleged that the fact that the Chicago, Milwaukee & St. Paul's embargo is the only one of its kind in Chicago, and that cars which are delayed in delivery on account thereof are charged demurrage by the Baltimore & Ohio, subjects complainant and others located upon the Chicago, Milwaukee & St. Paul tracks to unjust discrimination. A car of coal billed from a point of origin on the Baltimore & Ohio directly to a consignee and destination on the Chicago, Milwaukee & St. Paul tracks in the Chicago switching district would be subject to the Chicago, Milwaukee & St. Paul regulating embargo, but no demurrage would be charged against it by the Baltimore & Ohio. The freight and delivery charges on that car would be exactly the same if it had been billed flat to Chicago and then reconsigned to the same destination on the Chicago, Milwaukee & St. Paul track, but when so reconsigned the Baltimore & Ohio would assess demurrage on it if it were detained by the embargo beyond the free time allowed for reconsignment.

It has been uniformly held by this Commission that a shipper or consignee may not be required to pay a demurrage charge unless the carriers' tariffs provide for same in clear and specific form and manner. *Munroe & Sons v. M. C. R. R. Co.*, 17 I. C. C. Rep., 27; *Tioga Coal Co. v. C., R. I. & P. Ry. Co.*, 18 I. C. C. Rep., 414.

It has been held, and it is simple and obvious equity, that demurrage may not be assessed except for or because of failure on part of shipper or consignee to comply with his obligations. *Coomes & McGraw v. C., M. & St. P. Ry. Co.*, 13 I. C. C. Rep., 192; *New York Hay Exchange Asso. v. P. R. R. Co.*, 14 I. C. C. Rep., 178; *Porter v. St. L. & S. F. R. R. Co.*, 15 I. C. C. Rep., 1; *American Creosoting Works v. I. C. R. R. Co.*, 15 I. C. C. Rep., 160; *Rossie Iron Ore Co. v. N. Y. C. & H. R. R. R. Co.*, 17 I. C. C. Rep., 392.

It has also been held that where a switching service is yet to be performed delivery has not been effected. *McNeill v. S. Ry. Co.*, 202 U. S., 543, citing *Rhodes v. Iowa*, 170 U. S., 412; *L. & N. R. R. Co. v. Stock Yards Co.*, 212 U. S., 143; *Union Stock Yards Co. v. U. S.*, 164 Fed. Rep., 404.

It is said that the right of reconsignment is a mere privilege and not an obligation under the contract, and that it is a privilege that may or may not be exercised by consignee at his option; that the undertaking of the Baltimore & Ohio under its original contract is merely that if the consignee exercises the right of reconsignment no charge will be made for the delivery of the car to a connecting carrier selected by the consignee, and that it is able and willing to undertake further contract desired by the consignee. As has been seen, however, there is no further contract. The Baltimore & Ohio by its tariff agrees without further charge to transfer the car to a connecting carrier selected by the consignee, and it agrees to pay the charges of such connecting carrier within a stated limit. It is argued that no warranty is given by the Baltimore & Ohio that every reconsignment which shipper or consignee might elect to make could always be performed and that if, for any reason, the route selected by consignee could not be used, then the consignee has ordered a reconsignment that is either impracticable or impossible, and upon being advised of same and making no further disposition of his shipment, he could be required to pay demurrage charges. This leads us to inquire: If, under an open reconsignment privilege stated in carrier's tariff, shipper makes reconsignment and, on account of obstructions to its tracks or other disabilities of its own, the carrier is unable to execute that reconsignment, would it be held that the shipment was subject to demurrage? Of course the reconsignments must be confined to points that are covered by and provided for in the carrier's tariff.

It is suggested that consignees having undertaken to make arrangements for acceptance of their shipments by the Chicago, Milwaukee & 20 I. C. C. Rep.

St. Paul have thereby made that company their agent, and that even if the Baltimore & Ohio was of opinion that the conduct of the Chicago, Milwaukee & St. Paul was not justified, the Baltimore & Ohio still could do nothing except await the pleasure of the Chicago, Milwaukee & St. Paul. The same thing is true as to the shipper or consignee. He gives his reconsigning order, requests delivery of his car, and is powerless to do anything except await the action of the defendants. If defendants' tariffs provide something that it is impossible for them to perform, something that they may not reasonably be required to perform, certainly their recourse is not in the assessment of additional charges against the shippers or consignees growing out of causes in the creation of which neither shipper nor consignee has any part and over which neither of them has any control.

The Baltimore & Ohio suggests that to forbid demurrage charges upon the cars in question would afford opportunity to the carrier and switching lines for giving undue and unlawful preference to some coal shippers over others, and would give to coal shippers an unlawful opportunity to gain unfair advantage over their competitors, because a consignee, knowing that unless some disposition were made of his shipments demurrage would accrue thereon, could reconsign them in large numbers to destinations on the Chicago, Milwaukee & St. Paul tracks and thus relieve them from demurrage charges, and later, and before they were accepted by the Chicago, Milwaukee & St. Paul, change the disposition and send them to other points free of demurrage. The answer to this is that the carrier can control that situation by limiting the number of free reconsignments permitted on any car. Then if consignee reconsigned his shipment to delivery on Chicago, Milwaukee & St. Paul tracks it would have to go there and be delivered and he would have to dispose of it as best he could.

Upon consideration of the whole record we are of the opinion that the demurrage charges here complained of were assessed by the Baltimore & Ohio without proper provision therefor in its tariffs. Tariff authority for such charges would, we think, be unreasonable and unjust unless confined to instances in which cars are held by request or neglect of shipper or consignee.

The original claim for reparation was in the sum of \$50, but it was later agreed that the amount was \$41. An order will be entered directing defendant Baltimore & Ohio Railroad Company to pay complainant reparation in the sum of \$41, with interest from July 15, 1909, and requiring it to cease and desist from the practice of assessing demurrage upon complainant's shipments of coal which have been reconsigned in accordance with the terms and within the time limit provided in this defendant's tariffs, and which are held because of neglect or refusal of connecting or delivering carrier to receive same.

No. 3282.
ARIZONA RAILWAY COMMISSION
v.
WELLS FARGO & COMPANY.

Submitted March 17, 1911. Decided April 10, 1911.

Defendant's rates for the transportation of horses, in carloads, of \$500 between El Paso, Tex., and Phoenix, Ariz.; \$400 between Phoenix, Ariz., and Los Angeles, Cal.; and \$575 between Phoenix, Ariz., and San Francisco, Cal., found unreasonable to the extent that they exceed, respectively, \$300, \$320, and \$470, which rates are prescribed for the future.

George J. Stoneman for complainant.
Charles W. Stockton and Harry S. Marx for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

In a petition filed on behalf of the Arizona Territorial Fair Commission complainant alleges that defendant's rates for carriage of horses in carloads between El Paso, Tex., and Phoenix, Ariz.; between Phoenix and Los Angeles, Cal.; and between Phoenix and San Francisco, Cal., are unreasonable and unduly discriminatory. The rates in controversy with the distances between the points named are as follows:

Between—	Distance.	Rate per car.
	Miles.	
El Paso and Phoenix	433	\$500
Phoenix and Los Angeles	451	400
Phoenix and San Francisco	920	575

Phoenix is on the Arizona Eastern Railroad and the Santa Fe, Phoenix & Prescott Railway, 35 miles north of Maricopa, Ariz., a point on the main line of the Southern Pacific Company, and 193 miles south of Ash Fork, Ariz., a main-line point on the Atchison, Topeka & Santa Fe Railway.

The rates on horses are based upon merchandise rates at a minimum carload weight of 10,000 pounds. The rate from El Paso to Phoenix

was established when the merchandise rate was \$5.50 per 100 pounds. In *Maricopa County Commercial Club v. Wells Fargo & Co.*, 16 I. C. C. Rep., 182, the merchandise rate between El Paso and Phoenix was reduced to \$3.75 per 100 pounds, but defendant did not reduce its rates on horses to correspond with the change in the merchandise rates. The merchandise rates from Phoenix to Los Angeles and San Francisco are \$4 and \$5.75, respectively, and the rates on horses between those points are made by application of the minimum weight of 10,000 pounds to the merchandise rates.

Complainant's case rests mainly on seven exhibits comparing the rates in controversy with other express rates on horses and containing certain statistical data in relation to the defendant's financial condition. One of the exhibits shows the following rates on horses:

Between—	Distance.	Express rate.	Rate per car-mile.
	<i>Miles.</i>		
Kansas City, Mo., and Dallas, Tex	517	\$250	\$0.484
St. Louis, Mo., and Oklahoma City, Okla.....	593	275	.464
Kansas City, Mo., and Denver, Colo.....	640	300	.469
El Paso, Tex., and Los Angeles, Cal.....	814	425	.521
El Paso, Tex., and San Francisco, Cal.....	1,283	500	.390

Car-mile earnings between El Paso, Tex., and Phoenix, Ariz., are \$1.155; between Phoenix and Los Angeles \$0.887, and between Phoenix and San Francisco \$0.625. In Texas the express rates per car for 400 miles are \$205, with car-mile earnings of \$0.513; for 500 miles \$230, with car-mile earnings of \$0.46; and for 900 miles \$345, with car-mile earnings of \$0.383. Defendant asserts that the rates from Kansas City and St. Louis to western points are not a fair comparison, because they have been made to meet rates for the transportation of horses by railroad over lines other than that on which defendant operates. The rates within the state of Texas have been fixed by state authority, and although it appears that they have not been tested in the courts, defendant claims that they do not afford fair compensation for the service performed.

The merchandise rate from El Paso to Los Angeles is \$6 and the carload rate on horses \$425. It will therefore be seen that while a car of horses can be shipped from El Paso direct to Los Angeles for \$425, if the car is shipped to Phoenix, which is only 35 miles off the direct line of the Southern Pacific, and reshipped from that point to Los Angeles, the total charges from El Paso to Los Angeles will be \$900. Defendant urges that the necessary switching at Maricopa involves greater risk than the direct transportation from El Paso to Los Angeles and San Francisco; that the two movements from El Paso to Phoenix

and thence to Los Angeles are complete in and of themselves, and necessarily more expensive and should properly bear a higher charge than the direct movement from El Paso to Los Angeles.

Assuming that the rate of \$425 per car from El Paso to Los Angeles is just and reasonable, complainant asks the establishment of rates between El Paso and Phoenix and between Phoenix and Los Angeles and San Francisco upon the same car-mile basis plus a reasonable charge for the movement between Maricopa and Phoenix. As defendant's rate on carload shipments of horses moving to Phoenix from points in Texas is on the average \$25 more than the rate to Maricopa it is contended that the differential above Maricopa should not exceed \$25 per car. In view of these facts, and of the fact that the El Paso-San Francisco rate is \$75 more than the El Paso-Los Angeles rate, complainant contends that the rate between El Paso and Phoenix should not exceed \$233; between Phoenix and Los Angeles, \$242; and between Phoenix and San Francisco, \$317. Inasmuch as the horses are stopped at Phoenix for exhibition purposes, and reshipped immediately after the close of the fair, complainant asserts that the movement to and from Phoenix amounts, in substance, to a through movement with a stop-over at Phoenix, and that the additional charge between Maricopa and Phoenix would be ample compensation to defendant for the extra service performed.

Inasmuch as horses are moved in special equipment in passenger trains, it is pertinent to refer to the passenger fare between the points in controversy. The first class fare from El Paso to Phoenix is \$17.40; Phoenix to Los Angeles \$17.30; Phoenix to San Francisco \$29.30; El Paso to Los Angeles \$30; and El Paso to San Francisco \$40. The special-car fares for 18 adult passengers would be El Paso to Phoenix \$313.20; Phoenix to Los Angeles \$311.40; Phoenix to San Francisco \$527.40; El Paso to Los Angeles \$540; and El Paso to San Francisco \$720. On the other hand, in considering a comparison of the rates on horses with the merchandise rates it will be noted that in order to obtain the revenue which would accrue from 10,000 pounds of merchandise the express company performs a package-collection service at the point of origin and a package-delivery service at the point of destination, whereas no such expensive service is involved in the transportation of a carload of horses. The express company undertakes to limit its liability to \$75 per horse. The classification provides for graduated charges above those here given when the value exceeds \$75 per horse.

Defendant states in its brief that a contract between the express company and the Southern Pacific Company provides that on shipments of horses over the line of the latter company 80 per cent of the

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INVESTIGATION AND SUSPENSION DOCKET No. 14.

IN THE MATTER OF AN INVESTIGATION CONCERNING THE PROPRIETY OF PROPOSED SCHEDULES OF RATES ON LUMBER FILED BY THE VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY.

Submitted March 13, 1911. Decided April 10, 1911.

This proceeding was an investigation concerning the propriety of proposed schedules of rates known as Vicksburg, Shreveport & Pacific Railway Company Tariff No. 610-B, I. C. C. No. 2679; the operation of which was suspended until July 5, 1911. From the facts developed; *Held*, That no adequate reasons exist for the further suspension of said tariff and that an order will therefore be entered to vacate and set aside the order of suspension.

G. F. Thomas for the complainants, Arkansas Southern Manufacturers Association.

J. E. Johanson for Chicago, Rock Island & Pacific Railway Company.

V. Schaffenburg for Vicksburg, Shreveport & Pacific Railway Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

On September 16, 1910, the Commission entered upon an investigation concerning the propriety of proposed schedules of rates on lumber filed by the Vicksburg, Shreveport & Pacific Railway as its tariff No. 610-B, I. C. C. No. 2679, effective September 19, 1910, which will be designated herein as the suspended tariff. Pending this investigation the Commission suspended the operation of said tariff until July 5, 1911.

A complaint against the suspended tariff was filed by the Arkansas Southern Manufacturers Association, an organization composed of 10 lumber firms, with mills at Junction City, Ark., Randolph, Lillie, Bernice, Dubach, Ruston, Ansley, Hodge, and Wyatt, La., all of which are points on the line of the Chicago, Rock Island & Pacific Railway Company between El Dorado, Ark., and Winnfield, La. The complaint alleges that the cancellation by the suspended tariff of joint rates named in the tariff preceding it from points on said line via Ruston, La., and the Vicksburg, Shreveport & Pacific Railway

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to points south of, on, and north of the Ohio River has the effect of increasing the rates on complainants' shipments to said territory from one-half to 5 cents per 100 pounds. This preceding tariff, which remained in force by reason of our order of suspension, is Vicksburg, Shreveport & Pacific Tariff No. 628-A, I. C. C. No. 1796, and will be hereinafter designated the present tariff. Specific objection is made by complainants to the proposed cancellation of the joint rates named in supplement 104 of this tariff. These rates apply on lumber and logs except hardwood lumber, such as walnut, cherry, cedar, and mahogany. We understand that complainants are concerned in the yellow-pine and cypress lumber rates and not in the hardwood-lumber rates. Consequently, only the yellow-pine and cypress lumber rates will be discussed in this report.

The line of the Rock Island on which complainants' mills are located was formerly the Arkansas Southern Railroad, which extended from El Dorado south to Winnfield. At that time the Rock Island system reached Haskell, Ark., a point 100 miles north of El Dorado. Except for a few small or stub railroads extending to the timber, the rail connections of the Arkansas Southern were the St. Louis, Iron Mountain & Southern Railway at El Dorado, the Louisiana & Arkansas Railway, and the Louisiana Railway & Navigation Company at Winnfield, and the Vicksburg, Shreveport & Pacific at Ruston. Joint rates on lumber from Arkansas Southern points were in effect over these roads. In 1906 the Rock Island acquired the Arkansas Southern and connected it with its system by constructing a line from Haskell to El Dorado. This afforded a direct outlet over the Rock Island lines for the lumber originating along the line of the Arkansas Southern. The Rock Island then ordered the cancellation of all joint rates over these connections with the Arkansas Southern except certain rates via Ruston and Winnfield to Texas points, which are not naturally reached through the direct line of the Rock Island. This order was complied with and the cancellation of all of the joint rates in question was effected save those to points east of the Mississippi River via Ruston and the Vicksburg, Shreveport & Pacific which are named in the present tariff. As the rule of the Commission prevented the publication of further supplements to this tariff, the cancellation of these rates could only be had by reprinting the entire tariff. This involved considerable expense and delay, and the new issue, which is the suspended tariff here in question, was not filed until August 15, 1910.

The present tariff provides rates on lumber from the stations named in the complaint via Ruston to Cairo, Ill., Louisville, Ky., and Cincinnati, Ohio, of 16, 21, and 23 cents, respectively. The rates to intermediate points south of the Ohio River are adjusted with relation to Cincinnati, while the rates to points north of the Ohio River are

fixed on the basis of the sum of the rates to and from Louisville or Cincinnati, but not higher than the sum of the rates to and from Cairo.

Following the acquisition of the Arkansas Southern and its connection with the Rock Island system, rates via the Rock Island from former Arkansas Southern stations were established as follows: To Memphis, 14 cents; to Cairo and Thebes, 16 cents. The through rates to points east of the Mississippi are made on the sum of the rates applying to and from these river crossings. On this basis the through rate to Louisville is 25 cents and to Cincinnati 27 cents, as compared with 21 and 23 cents, respectively, via Ruston under the present tariff.

The proposed cancellation by the suspended tariff of the joint rates via Ruston would leave in effect through rates or bases for rates, from the Rock Island points between El Dorado and Winfield via the Rock Island and connections at the Mississippi River, and it is this situation of which complaint is made. The Rock Island contends that this proposed cancellation is entirely proper and that the basis of rates established following the extension of its road into the territory in question does not result in subjecting the complainants to any undue discrimination or to the payment of unjust or unreasonable rates. At the hearing the Rock Island representative stated that the continuance of the rates and routes via Ruston provided by the present tariff would involve the entire readjustment of rates to the Ohio River crossings from Rock Island stations south of Little Rock, Ark.

The rates via the Rock Island lines to the Mississippi River crossings apply not only from the former Arkansas Southern points, which will be hereinafter referred to as main-line points, but also from the following small lines diverging therefrom: The Arkansas Southeastern Railway at Randolph, the Bernice & Northwestern Railway at Bernice and Dubach, and the North Louisiana & Gulf Railway at Hodge. The rates of these small stub lines for transporting the lumber or logs to the main-line points are absorbed in the Rock Island rates. On the contrary, the rates via Ruston named in the present tariff do not apply from the stub-line points, but are applicable only from the main-line points.

The evidence is that at least 70 per cent of the lumber shipped from complainants' mills is sawed from logs that originate on the small roads and move by rail from outlying stations thereon to the main-line points. An idea of the cost of this small-line transportation is given from the following written statement submitted by the representative of complainants:

The charges on the Arkansas Southeastern Railway for shipment of logs to Randolph, La., of a sufficient weight to equal a shipment of 40,000 pounds of lumber would be \$32, based on tariff of \$2 per 1,000 feet board measure on logs.

This charge is estimated to be equivalent to 8 cents per 100 pounds, which would have to be added to the rate from Randolph named in the present tariff in order to arrive at the real cost of moving this lumber via Ruston. Thus the transportation of lumber from Arkansas Southeastern points via Ruston to Louisville and to Cincinnati would cost 29 and 31 cents, respectively, as compared with 25 and 27 cents over the Rock Island. What is true in connection with the shipment of logs originating on the Arkansas Southeastern is substantially true in connection with shipments originating at stations on the other stub lines named. Tariffs filed with the Commission name rates as follows: Over the Arkansas Southeastern, 5 miles or under, 4 cents; 10 miles and over 5, 4½ cents; 20 miles and over 10, 5 cents, etc.; over the Bernice & Northwestern, under 10 miles, \$4 per car; 15 miles and over 10, \$5 per car; 25 miles and over 15, \$6 per car; and over the North Louisiana & Gulf, 1 to 15 miles, inclusive, 4 cents.

The result of this existing rate adjustment is that the greater portion of the lumber traffic involved in this complaint moves over the Rock Island and not via Ruston. Consequently the cancellation of the present joint rates via Ruston, which the complainants seek to prevent, could not possibly have a detrimental effect on this large percentage of complainants' business.

The traffic of 4 of the 10 complainants originates on the three small roads named. Two of the other complainants are located at Ruston, a main-line point. As to these two firms there can be no complaint, because that point is also reached by the Vicksburg, Shreveport & Pacific, and the Rock Island is not in position to handle business in connection with the Vicksburg, Shreveport & Pacific from Ruston. The Rock Island does not publish rates from Ruston in connection with the Vicksburg, Shreveport & Pacific. One of the remaining complainants, the Cornie Stave Company, is located at Junction City, and the Rock Island representative stated that it is not engaged in shipping yellow-pine and cypress lumber. The three remaining complainants have mills on the East & West Louisiana Railway, the Wyatt & Donovan Railway, and an unnamed private railroad. These are private industrial railroads connecting with the main line at Ansley, Wyatt, and Lillie, respectively, but they file no tariffs with the Commission, and the cost of transporting logs and lumber over them is not absorbed in the rates via either the Rock Island or the Vicksburg, Shreveport & Pacific via Ruston. Such rates apply only from the junction points. The volume of traffic originating with these three complainants is very small as compared with that of the other complainants, and it may be fairly assumed from the record that this traffic moves via Ruston. Under the present rates from Ansley, Wyatt, and Lillie, which were originally

established by the Arkansas Southern Railroad, the haul of the Rock Island is the distance from said points to Ruston, of 10, 28, and 41 miles, respectively, while its haul under its own rates northward is the distance to Memphis, of 328, 345, and 288 miles, respectively.

The complainants seem to particularly object to the cancellation of the rates to points in Tennessee, Kentucky, West Virginia, and a few points in Ohio. With respect to this small per cent of complainants' business, the rates in the present tariff to a number of these points are from 1 to 5 cents lower than the Rock Island rates. But it is a fact that a large majority of the rates via Ruston shown in the present tariff are not lower than the rates via the Rock Island direct. This is notably true of the rates to the great consuming territory north of the Ohio River. Under the present adjustment the lumber mills take advantage of the lower rates via Ruston and the Rock Island loses traffic that originates on its own line and is deprived of the haul over a reasonable through route under rates that it contends are reasonably low, as, for example, the rates of 27 cents to Cincinnati and 25 cents to Louisville from Ruston, a central point in the district where complainants are located. Between these points the distances are 813 and 699 miles, respectively. The reasonableness of these Rock Island rates is not attacked in this complaint, and we do not here pass upon them.

It is apparently true that if all the lumber to destinations both north and south of the Ohio River moved via Ruston, the cost would be greater than if it all moved northward over the Rock Island via the Mississippi River crossings, and it can not be disputed that the blanket rates of the Rock Island of 16 cents to Thebes and Cairo and 14 cents to Memphis, applying from the small lines before named, as well as the main-line points, serve to accord complainants' traffic as a whole much more advantageous through rates than are provided by the present tariff. At the hearing the representative for the Rock Island testified that his road did not intend to instruct the cancellation of rates in the present tariff via Ruston to points in Tennessee and Kentucky other than the Ohio River crossings. But the representative of the Vicksburg, Shreveport & Pacific objected to the continuance of these rates unless the present rates on and north of the Ohio River are also continued.

As we have before shown, the 70 per cent or more of complainants' traffic that originates on the three small lines that are parties to the Rock Island rates moves under such rates because they absorb the small-line charge and are therefore cheaper than the present rates from the main-line points via Ruston, which do not absorb the small-line charge. While the cancellation of the rates via Ruston will not adversely affect this traffic, the continuance of such rates results in a discrimination against such of the traffic as moves in competition

with that portion of complainants' traffic which does not originate on the aforesaid small lines; for example, traffic from Ansley, Wyatt, and Lillie, La., moves on the present rates via Ruston of 21 cents to Louisville and 23 cents to Cincinnati, while similar traffic from Randolph, Bernice, Dubach, and Hodge, La., moves on the Rock Island rates of 25 cents to Louisville and 27 cents to Cincinnati.

The acquisition of the Arkansas Southern Railroad and the construction of 100 miles of track to connect it at Haskell, Ark., with the Rock Island system, afforded complainants a new and valuable outlet for their forest products. Direct connection with the great lumber markets was had, and the Rock Island established through routes thereto, which compare favorably with the present through routes via Ruston. Before its acquisition by the Rock Island, the Arkansas Southern, a lumber-carrying road of small mileage, authorized the establishment of through routes and joint rates with its connections that, if they had been maintained by the Rock Island, would have deprived it of transportation revenues to which it was entitled by reason of its mileage and geographical situation, as well as by virtue of its investment. We can not find from the facts developed in this proceeding that the Rock Island road has violated the act to regulate commerce in insisting upon the cancellation of the present rates via Ruston and the Vicksburg, Shreveport & Pacific. It is apparently desirous of making the best of its purchase. It has a perfect right to do this, consistent with the interests of the territory it serves. Looking at this territory as a whole, in the light of the facts produced in this investigation, it appears to us that it has been benefited rather than harmed. The advantages of the new arrangement were freely admitted, and we do not think that its disadvantages are serious enough to warrant interference by this Commission at the present time. Changes involving so many rates and localities can rarely, if ever, be made without adversely affecting some points or interests. It is our opinion that no adequate reasons exist for the further suspension of the schedules in question. An order will therefore be entered to vacate and set aside the order suspending the operation of the tariff filed by the Vicksburg, Shreveport & Pacific as its No. 610-B, I. C. C. No. 2679.

Prior to the order of suspension the Commission received protests that the suspended tariff omitted from the "list of stations from which rates apply" all but one station on the main line and all stations on the Jena branch of the Louisiana & Arkansas Railway, thus canceling the joint rates from these points carried in the preceding or present tariff. This omission is alleged by large shippers of yellow-pine lumber from the affected points and by the general freight agent of the Louisiana & Arkansas Railway Company to have been the result of a clerical error.

We find that the suspended tariff omits 52 stations on the main line and the Jena branch of the Louisiana & Arkansas Railway that are carried in the present tariff, and includes the following points on the Shreveport branch that are not carried in the present tariff: Adner, Goodwill, Liberia, McIntyre, Princeton, and Shreveport. Both tariffs name rates from Minden, the junction point of the main line and the Shreveport branch; from Winnfield, the junction point of the main line and the Rock Island, the Tremont & Gulf Railway, and the Louisiana Railway; and from Coyle and Gleason, points on the Dorcheat Valley Railroad, an industrial road extending from Cotton Valley on the Louisiana & Arkansas to the timber. We understand that a clerical error is responsible for the omission in the suspended tariff of the stations in question, and, under the circumstances, we shall expect the defendants to rectify the error and remove the discrimination apparently resulting therefrom.

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No. 3495.

OHIO FACE BRICK MANUFACTURERS' ASSOCIATION

v.

ADAMS EXPRESS COMPANY ET AL.

Submitted December 27, 1910. Decided April 10, 1911.

For the transportation of sample brick the express companies assess merchandise graduated charges. Due to the peculiarly favorable characteristics of this traffic from a transportation standpoint, the charges now assessed are found to be unjust and unreasonable in so far as they exceed merchandise pound rates, with a minimum charge of 35 cents.

H. H. Henry for complainant.

T. B. Harrison, jr., for Adams Express Company and American Express Company.

J. D. Ludlow for Wells Fargo & Company.

O'Brien, Boardman, Platt & Littleton for United States Express Company.

M. C. Thaxton for Pacific Express Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The petitioner in this case is a voluntary association of individuals, firms, and corporations engaged in the manufacture of face building brick in the states of Ohio and Pennsylvania, and in the course of their business they send sample brick throughout the country, employing in this service the express companies. The complaint alleges that the rates charged are excessive, unreasonable, and unjust, and that complainants are subjected to undue and unreasonable prejudice and disadvantage.

In 1896, and for many years prior thereto, samples of brick and terra cotta were carried at merchandise pound rates, with a minimum charge of 30 cents per package. About 1897 the minimum charge was increased to 35 cents, the rate remaining the same. In 1898 the graduated charges under base rates, ranging from 40 cents to \$6 per 100 pounds, were materially increased, in some instances 40 per cent. In 1903 the charges on sample brick were advanced from merchandise pound rates to merchandise graduated charges. A shipment,

weighing 12 pounds, from Columbus, Ohio, to Chicago, Ill., cost 35 cents on May 24, 1902, and on November 10, 1910, a shipment of the same weight between the same points cost 60 cents, an increase of over 71 per cent. A number of instances similar to this are given in the record as illustrating the difference in the charges wrought by the change in the classification. It is sufficient to say that the increase in charges resulting therefrom is substantial.

The defense of the present rates is rested largely upon the value of the service performed by the express companies; that is, its value to the manufacturers. Defendants call attention to the fact that the principal means employed by certain brick manufacturers in advertising their business is to send out these samples and that the express charges are insignificant in comparison with the value of the service in this respect. It is shown that in certain cases sample brick are sent to architects and builders for use in connection with proposed construction; that other sample brick are sent on orders by telegraph or telephone, to expedite the closing of a contract or to save the delay and expense which would be incurred in sending a traveling salesman. Defendants further assert that where their rates are lower than merchandise rates it is usually because the express companies get shipments in heavy weights and economize in wagon service.

The evidence shows that the brick manufacturers are almost wholly dependent upon the express companies for the transportation of their samples. They can not ship them by mail because even one brick exceeds the weight limit; neither can they ship by freight because in most instances time is an important factor. These conditions are such that the express companies have no serious competition for this business. The record contains a number of exhibits showing the shipments made during specified periods and the amounts paid therefor by the manufacturers. These exhibits indicate that the business which the express companies derive from the transportation of sample brick is very considerable and extends over a wide range of territory. For instance the record shows that one manufacturer paid to the express companies for the transportation of sample brick approximately \$60 per month; another manufacturer, \$50 per month; and another averaged over \$400 per month. It is estimated by complainant that the total amount paid per annum to express companies for the transportation of sample brick would amount to \$180,000.

The average shipment contains approximately five brick, while the weight per brick is 5.6 pounds. The average weight of all shipments in all the exhibits filed is 33 pounds, while the average revenue is stated to be 88 cents per shipment.

The express classification is based upon merchandise rates. The service rendered, the risk involved, the space occupied, and the degree of care required to be exercised may fairly be taken as the bases upon which the charges should be determined.

The service rendered in the transportation of these brick is similar to that given to the ordinary express shipment. There are no peculiar features attaching which make the cost of service more than the average, but on the contrary there are certain characteristics which make the transportation of sample brick a desirable business for the carriers. A shipment of sample brick weighs much more in proportion to the space occupied in wagons and cars than the average shipment, and only the ordinary care in handling is required. No risk is borne by the carriers concerning the collection of charges, as all shipments are prepaid. Small shipments of three brick or less are wrapped in corrugated paper, and the packages may be piled one upon another in cars or wagons without risk of damage to themselves or to other packages. Larger shipments are packed in wooden boxes or barrels, thus materially increasing the weight on which charges must be paid, as the boxes or barrels must be of a heavy, substantial nature.

In this connection it is asserted by defendants that the value of the article carried is separated from the other elements governing the rates and is made the basis of a second schedule, which is in the nature of an insurance charge, and which is added to the express charge on articles exceeding \$50, or 50 cents per pound, in value. We think, however, that it is fundamentally true that the charges of common carriers generally bear some relation to the risk involved in the handling of particular traffic, and that in adjusting the charges on the express matter here involved the favorable characteristics in this respect should receive consideration, especially when it appears that no value is claimed for the article in question and defendants charge the same rates as for jewelry, silks, fancy dry goods, and other articles of much greater value and liability to injury. In fact, in the official express classification we find the following item:

11. Valuation charges: (a) The rates governed by this classification are based upon a value of not exceeding \$50 on each shipment of 100 pounds or less, and not exceeding 50 cents per pound, actual weight, on each shipment weighing more than 100 pounds, and the liability of the express company is limited to the value above stated unless a greater value is declared at time of shipment, and the declared value in excess of the value above specified is paid for, or agreed to be paid for, under the schedule of charges for excess value in paragraph (c) of this rule.

A further point is made on behalf of the express companies that sample brick should not take the lower rate because nothing but the samples move by express. In this connection it may be pointed

out that grain samples and hop samples are given special rates, and yet neither grain nor hops move by express in any considerable amount except as samples. Moreover, it may be added that what this complainant is seeking is a reasonable rate for the service which it requires, and the question of what other traffic may or may not move has no bearing upon the determination of this particular issue.

By way of comparison it appears that wall paper samples now take the same rate as they did in 1896, that is, merchandise pound rates with a minimum charge of 35 cents, yet they are not so desirable a traffic for the carriers as are samples of brick. Wall-paper samples weigh less than brick samples and are of greater bulk in proportion to brick. They are also subject to damage by fire and water as well as to liability of being torn in handling. While it may be true that occasional shipments of wall paper, other than samples, move by express, it is manifestly not a commodity which moves in that manner to any considerable extent.

Investigations which the Commission has made indicate that the express classification has been revised to a considerable extent within comparatively recent years, and of 148 changes which have been counted, more than 80 per cent of them are increases. These increases appear in most instances to result from no particular scientific readjustment of rates, nor do they appear to be due to any ascertainable basis which can be said to justify them. The case under consideration seems to be one of this character. For many years the express companies carried the commodity in question under a lower classification than the one now prevailing, and it appears that the Great Northern Express Company and the Northern Express Company still maintain a classification which carries with it lower rates.

Upon the whole record in this case we are of opinion and so find that the charges assessed by defendants upon sample brick, under the classification which applies the merchandise graduated charges thereto, are unjust and unreasonable in so far as they exceed the charges which are assessed at merchandise pound rates, with a minimum charge of 35 cents.

An order will be entered in accordance with the foregoing conclusions.

No. 3256.

FURNACE RUN SAW MILL & LUMBER COMPANY

v.

BOSTON & MAINE RAILROAD ET AL.

Submitted September 26, 1911. Decided April 10, 1911.

Defendants' rate on spruce lath and lumber from Boston to Toledo not found to be unjustly discriminatory or unreasonable. Complaint dismissed.

J. J. Foley for complainant.

Matthew Hale and *Charles H. Blatchford* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with principal offices at Pittsburg, Pa. Its complaint, filed May 2, 1910, attacks as unreasonable and unjustly discriminatory defendants' rate on spruce lath and lumber from Boston, Mass., to Toledo, Ohio. The specific complaint is against the domestic class rate of 19 cents, Boston to Toledo, which is also applicable when the lumber originates in Canada and Newfoundland and is transported by steamship to Boston.

This rate is alleged to be unjustly discriminatory when compared with the 14-cent import rate on mahogany logs from and to the same points. Petitioner makes no reference to the 17-cent import rate on spruce from Boston to Toledo. Apparently complainant's claim is based in large part upon a misunderstanding of the tariffs, as the petition is directed primarily to the following rule in defendants' import tariffs:

Rates named herein apply only on property coming from foreign ports (exclusive of the Maritime Provinces of Canada and Newfoundland) into the United States and delivered to the rail carrier direct from ship's side or dock of the vessel bringing such property to Boston, Mass., or on such property received by the rail carrier from customs-bonded warehouse or appraiser's stores (not internal-revenue stores).

This rule is of general application to all imported lumber of whatever character and it is apparent that it is not discriminatory as to spruce. It appears from the tariffs that the traffic here involved when originating in the Maritime Provinces of Canada and Newfoundland is accorded the same rates as though it was of domestic origin.

Complainant's evidence consists largely of comparisons of domestic mahogany and spruce rates between representative points which show varying differentials in favor of spruce. While these comparisons would be forceful if we were dealing with rates of like kind they can not be accepted as a guide when dealing with rates as dissimilar in their nature as are import rates and domestic rates. The Commission and the courts have long recognized the fundamental dissimilarity of conditions under which such rates are constructed.

In regard to the import rate on mahogany, which is lower than the import rate on spruce, a wood of much less value, the testimony is that the Gulf ports are the natural gateways for mahogany to central freight association territory; that a small part of the traffic was secured by the lower Atlantic ports through the trunk lines meeting competition of the Gulf carriers, and that the rail lines from Boston have to make similar rates to get any of the traffic through the port of Boston. It is shown that during 1909 central freight association territory received 19,016 tons of mahogany logs from New Orleans via Gulf ports and 5,153 tons from Atlantic ports, of which 1,988 tons came through Boston. For the first 6 months of 1910 the Gulf ports handled 11,735 tons and the Atlantic ports 2,288 tons, 1,149 tons of which moved via Boston. Mahogany does not move from or through Canada or Newfoundland to Boston, but is shipped to that port direct from Honduras and other producing countries.

Following is a comparison of domestic spruce rates from Boston and points competitive with complainant to Toledo:

To Toledo from—	Mileage.	Rate per 100 pounds.	Rate per ton-mile.
		<i>Cents.</i>	<i>Mills.</i>
Boston, Mass., short line	795	19	4.8
Boston, Mass.	946	19	4.01
Green Bay, Wis.	441	10	4.5
Belmont, W. Va.	244	10	8.2
Parkersburg, W. Va.	237	10	8.4
Clifton, W. Va.	302	10	6.6
Point Pleasant, W. Va.	315	9	5.7
Central City, W. Va.	360	10	5.5
Kenova, W. Va.	366	9	4.9
Spencer, W. Va.	305	13	8.5
Kanawha, W. Va.	247	12	9.7

Upon the whole record we are of opinion that complainant has failed to show any violation of the statute. The relation in the rates on mahogany and spruce is justified by the dissimilar circumstances and conditions surrounding the traffic which are shown to prevail. Moreover, the rate from Boston to Toledo on spruce lath and lumber can not, upon the record before us, be said to be unreasonable for the service rendered. The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 5.

No. 3500, Sub-No. 5, Sub-No. 5-A, Sub-No. 5-B, Sub-No. 5-C, Sub-No. 5-D; and No. 3539.

IN THE MATTER OF THE INVESTIGATION OF ADVANCES IN RATES ON CEMENT BY CARRIERS IN TRANS-MISSOURI TERRITORY.

Submitted February 28, 1911. Decided April 4, 1911.

1. The principal carriers in trans-Missouri territory filed with the Commission tariffs which were to become effective September 1, 1910, containing new rates and charges upon cement from what is known as the gas belt in eastern Kansas and Oklahoma, and embracing such points as Iola and Chanute, Kans., but extending as far north as Sugar Creek, Mo., in the neighborhood of Kansas City, and as far south as Dewey, Okla., to points in Colorado, Kansas, Nebraska, and in other states embracing a wide range of territory, reaching from Illinois on the east into practically all trans-Missouri and intermountain territory. They also filed tariffs naming advances from Portland, Colo., to points chiefly in Colorado, Nebraska, Kansas, and Wyoming. These tariffs are now suspended until July 1, 1911, pending an investigation under the provisions of section 15 of the statute as amended June 18, 1910. After full hearing and investigation of the matters involved and upon all the facts and circumstances disclosed by the record; *Held*, That the proposed rates are not condemned between the following points of origin and destination, viz, Portland, Colo., to all destinations; Kansas City territory and points in Kansas and Oklahoma to points in Texas, as contained in Southwestern Lines Tariff, I. C. C. No. 737, Sup. No. 6; and from Bonner Springs and Yocemento, Kans., to various points in the states of Colorado, Iowa, Kansas, Missouri, Nebraska, Wyoming, and New Mexico, as contained in tariffs I. C. C. Nos. 2318 (Sup. No. 2), 2346, and 2348 of the Union Pacific Railroad Company. With these exceptions, the propriety of the new rates and charges has not been shown.
2. It does not appear of record that such of the present cement rates as it is held should not be advanced fail to pay their due proportion of the general burden of transportation. Some of them are now materially higher than they were for a long period, during which there was a considerable movement and the business had adjusted itself thereto.
3. The carriers publishing said tariffs are requested to withdraw them forthwith. If such action be not taken on or before the 15th day of May, 1911, the Commission will issue an order directing the maintenance of the present rates for a period of two years from that date

E. J. McVann and *C. E. Childe* for Sunderland Brothers.

L. T. Sunderland for Ash Grove Lime & Portland Cement Company.

H. C. Koch for Iola Portland Cement Company.

B. E. Allison for United Kansas Portland Cement Company.

James C. Jeffery and *H. J. Campbell* for Missouri Pacific Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; Chicago, Rock Island & El Paso Railway Company; and Trinity & Brazos Valley Railway Company.

Henry A. Scandrett and *Howard Bruner* for Union Pacific Railroad Company.

George H. Crosby for Chicago, Burlington & Quincy Railroad Company.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

W. F. Cowherd for St. Louis & San Francisco Railroad Company; St. Louis & San Francisco Railroad Company of Texas; and Fort Worth & Rio Grande Railroad Company.

J. W. Allen for Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The Commission entered an order on July 13, 1910, initiating an investigation into the propriety of certain new rates and charges on cement which were stated in a number of tariffs filed by the Atchison, Topeka & Santa Fe Railway Company, St. Louis & San Francisco Railroad Company, Union Pacific Railroad Company, Denver & Rio Grande Railroad Company, Missouri, Kansas & Texas Railway Company, Missouri Pacific Railway Company, and by F. A. Leland, agent. The rates involved are from points in what is known as the Gas Belt, which lies south of Kansas City and embraces such points as Iola and Chanute, and also from points as far north as Sugar Creek, Mo., in the neighborhood of Kansas City, and as far south as Dewey in Oklahoma, to points in Colorado, Kansas, Missouri, Nebraska, Wyoming, Montana, Arizona, New Mexico, and Texas and in other states. The points of destination to which the proposed rates apply cover a wide range of territory extending from Illinois and Tennessee on the east to trans-Missouri and intermountain territory on the west. The suspended tariffs also include rates from Portland, Colo., in the vicinity of Pueblo, to points chiefly in Colorado, Nebraska, Wyoming, Kansas, and Missouri.

Many of the new rates involve increases ranging from one-half to 5 cents per 100 pounds. A few of the proposed advances are in excess of 5 cents. Many rates which are now 17½ cents are 20 cents in the

proposed tariffs, and there are a number of points where the increase is from 20 cents to 25 cents per 100 pounds. The tariffs also contain some reductions, but they appear to be unimportant in comparison with the advances, and the carriers frankly admit that the new tariffs are filed for the purpose of securing additional revenue.

Practically all the tariffs under consideration were proposed to become effective September 1, 1910, but the effective date was postponed to November 1, 1910, and by orders of the Commission the tariffs were further suspended to July 1, 1911.

On August 30, 1910, certain producers of cement in the gas belt—namely, the Ash Grove Lime & Portland Cement Company, United Kansas Portland Cement Company, and the Iola Portland Cement Company—filed a complaint alleging that certain proposed new rates and charges from points in the gas belt to points in Colorado, Nebraska, Montana, Wyoming, Kansas, and Missouri were unreasonable and discriminatory. It is stated by the complainants that the Kansas gas belt is the largest cement-producing district in the United States except the Lehigh Valley district, and that complainants represent approximately two-thirds of the entire production of said district. Petitioners also complained of the adjustment which gives Dewey, Okla., lower rates than the Kansas gas belt to many points south in Oklahoma and Texas, whereas to points east, north, and west in Missouri, Kansas, Colorado, Wyoming, Nebraska, Iowa, and South Dakota, Dewey has the same rates as the Kansas gas belt. They further complained that Sugar Creek, Mo., has lower rates than the Kansas gas belt to many points on the north, east, and west, whereas to points south, Sugar Creek has as low rates as the Kansas gas belt. The new rates and charges specifically complained of are contained in the tariffs included in the above-mentioned order of investigation of the Commission, and these complainants were heard in connection with this general investigation. While their petition also assails the present rates on the traffic in question, that subject has not formed a part of the present inquiry, which is confined to the advances proposed to be made effective September 1, 1910, and later. Complainants' representative upon the hearing stated that it was their intention to attack the present adjustment of rates from the Kansas gas belt in a future proceeding, in event the proposed advances be not sustained by the Commission.

Complainants earnestly contend that the cement business in the Kansas gas belt is in a "languishing if not deplorable condition;" that the production in Kansas has very materially decreased; and that the mills have on hand large quantities of product which can not be marketed except at a loss. An officer of one of the mills testified that there had been a decrease of 46 per cent in the movement

to Colorado points, while the movement of cement from other producing points is in a healthy condition. It is said that official statistics of production show that the district in which Hannibal is situated increased its output 35 per cent during October, 1910, as compared with October, 1909. While it is alleged that these conditions are attributable to freight rates, the record does not justify a specific finding to that effect, as there may be and doubtless are many commercial and competitive conditions which have a bearing upon this condition. Still we feel that the freight-rate adjustment, as will be hereinafter shown, has not been entirely without its effect upon the situation here presented.

The most important of the proposed advances contained in the suspended tariffs under consideration, and concerning which there is protest, involve two separate sets of rates—one covering the movement of cement from points in the gas belt to Colorado common points, Denver to Trinidad, inclusive; the other, the movement from the gas belt to points in Nebraska, Kansas, and Wyoming. The testimony is that changes in the tariffs, both advances and reductions, other than those from and to the territory above defined, were made for the purpose of creating a better alignment of rates than now obtains. An examination of the suspended tariffs themselves indicates that this is generally true.

Each witness on behalf of defendants testified that the controlling factor in publishing the new rates was the need of the carriers for more revenue. In this connection it was agreed at the hearing that the record in what is known as the advance rate cases might be considered in connection with the present proceeding.

The entire record in the case leads to the belief that the carriers expected the general showing made by them in the so-called *Western Advance Rate case*, to justify the new rates and charges named in the tariffs suspended herein. In so far as the justification by the carriers of these particular advances depends upon the alleged need of additional revenue from their operations generally, including cement, the decision of the Commission rendered in *In re Investigation of Advances in Rates by Carriers in Western Trunk Line, Trans-Missouri, and Illinois Freight Committee Territories*, 20 I. C. C. Rep., 307, must be considered as conclusive.

The carriers further justify the proposed advances on the ground that cement rates are in themselves at present so low as to be unremunerative. The testimony of defendants' witnesses is that the rates on cement have been discussed by the carriers for a number of years with a view to readjusting them upon a higher basis, commercial and competitive conditions having forced them down to a point where they are unremunerative. Upon the proposition that the present rates are unreasonably low, the record is very meager.

It consists for the greater part of general statements by various witnesses for defendants that cement rates are unreasonably low, and that this commodity is not bearing its proportionate share of the cost of transportation.

For the purpose of showing the relation of earnings under the present and proposed rates on cement to the general business of the carriers in trans-Missouri territory, an examination has been made of their annual reports on file, and it appears therefrom that the average receipts per ton per mile on all business and the average distance haul of 1 ton on the lines of the principal carriers involved in the present proceeding for the year 1909 were as follows:

Carrier.	Average receipts per ton per mile, all freight.	Average distance haul of 1 ton.
	<i>Cents.</i>	<i>Miles.</i>
C. B. & Q.....	0.789	264
Mo. Pac.....	.863	177
St. L. & S. F.....	.963	167
M. K. & T.....	1.054	216
A. T. & S. F.....	1.086	253

The earnings of these carriers under the present and proposed rates on movement of cement between selected points are:

Rate on cement from Chanute, Kans., in cents per 100 pounds.

To—	Distance.	Present rate.	Mills per ton per mile.	Proposed rate.	Mills per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>		<i>Cents.</i>	
Denver, Colo	662	17½	5.3	20	6.0
Brewster, Colo.....	614	17½	5.7	20	6.5
Colorado Springs, Colo	621	17½	5.6	20	6.4
Laramie, Wyo	786	33½	8.4	33½	8.4
Cheyenne, Wyo.....	690	20	5.8	25	7.2
Grand Island, Nebr.....	367	20	10.9	21	11.4
Beaver City, Nebr	360	23½	13.1	24½	13.6
Long Island, Kans.....	349	22½	12.9	24½	14.0

Bearing in mind that cement is generally recognized to be one of the lowest grade commodities from a transportation standpoint, the comparison shown in the two tables above is significant. It appears of record that the average loading of cement from the gas belt is over 50,000 pounds per car, an amount considerably higher than the average minimum weight on cement in this territory, which is 88,000 pounds.

We are not convinced that cement moving from the gas belt to the territory involved in this proceeding, does not, under all the circumstances and conditions, bear its proportion of the transportation burden of the carriers.

In addition to the foregoing general features of the case, however, all parties concerned have introduced testimony and exhibits, briefs have been filed, and argument has been had relating particularly to the propriety under the statute of the proposed advanced rates and their reasonableness per se. In the consideration of this phase of the case, first, as to the rates from the gas belt to points other than Colorado points, we may take as fairly representative the advances made to points in the western part of Nebraska; that is, west of a line from Hastings to Superior, and also to points north of Hastings, such as those on the Ericson and Sargent branches of the Burlington and on the Burwell Branch of the Union Pacific in Nebraska. The short line to this territory is through Superior, Nebr., although it is stated that there is a considerable movement via Kansas City and St. Joseph.

The justification for these particular advances, as stated by the freight traffic manager of the Burlington and generally acquiesced in by other witnesses, was as follows:

We thought that we ought to have more money for handling cement and went to work to change the rates to bring that about. Our theory is that the rate from Hannibal, Mo. (on the Mississippi River), should be as low as it is from Iola. Our action in making these changes was to that extent in the nature of realignment of the rates. I think the rates as proposed to be advanced are reasonable rates—fair rates. I do not know of any reason why they can not do business on them. I think any rates lower than the proposed rates would be below a reasonable basis. My reasons to substantiate that statement are, I think, they would be unnecessarily reduced. I think what Iola wants is a parity; they want to meet their competition, and I think we have our rates adjusted so they can.

The distance from Hannibal to western Nebraska and Wyoming stations affected by the advance is in some instances more than 200 miles greater than from the gas belt. As illustrating this adjustment, there is cited the rate from Chanute, Kans., to Fort Laramie, Wyo., which is 40 cents, while the rate from Hannibal to Fort Laramie is 38 cents, the length of the latter haul being 143 miles greater than the former. It was stated that while the carriers seek to place Hannibal on a substantial parity with the gas belt, this policy is not followed so as to give each producing section the same rates to consuming points in Iowa, southern Minnesota, and the Dakotas, to which the distance from the two points is more nearly equal. An intervener, engaged in the cement business and getting its supply from the gas belt, stated that the principal competition in Nebraska, aside from Kansas gas belt other than those from whose dealers he has exclusive contracts, is Hannibal, Mo., and Portland, Colo.

We have examined the proposed tariff for 290 stations on the Burlington, located in

rado, and Wyoming, for the purpose of ascertaining the relative advances from the gas belt, St. Louis and Hannibal, Mo., and from Portland, Colo. The results are set forth below:

Advances from gas belt.

Advance of $\frac{1}{2}$ cent per 100 pounds to.....	21 stations.
Advance of 1 cent per 100 pounds to.....	40 stations.
Advance of $1\frac{1}{2}$ cents per 100 pounds to.....	6 stations.
Advance of 2 cents per 100 pounds to.....	4 stations.
Advance of $2\frac{1}{2}$ cents per 100 pounds to.....	15 stations.
Advance of 3 cents per 100 pounds to.....	5 stations.
Advance of $3\frac{1}{2}$ cents per 100 pounds to.....	10 stations.
Advance of 4 cents per 100 pounds to.....	1 station.
Advance of $4\frac{1}{2}$ cents per 100 pounds to.....	20 stations.
Advance of 5 cents per 100 pounds to.....	142 stations.
Advance of $9\frac{1}{2}$ cents per 100 pounds to.....	2 stations.
Not advanced	24 stations.
Total.....	290 stations.

Advances from St. Louis and Hannibal to the same stations.

Advance of $\frac{1}{2}$ cent per 100 pounds to.....	40 stations.
Advance of 1 cent per 100 pounds to.....	64 stations.
Advance of $1\frac{1}{2}$ cents per 100 pounds to.....	1 station.
Advance of 2 cents per 100 pounds to.....	10 stations.
Advance of $2\frac{1}{2}$ cents per 100 pounds to.....	21 stations.
Advance of 3 cents per 100 pounds to.....	4 stations.
Advance of 4 cents per 100 pounds to.....	1 station.
Not advanced.....	149 stations.
Total.....	290 stations.

Advances from Portland, Colo., to the same stations.

Advance of 1 cent per 100 pounds to.....	9 stations.
Advance of $1\frac{1}{2}$ cents per 100 pounds to.....	31 stations.
Advance of 2 cents per 100 pounds to.....	16 stations.
Advance of $2\frac{1}{2}$ cents per 100 pounds to.....	83 stations.
Advance of 3 cents per 100 pounds to.....	13 stations.
Advance of $3\frac{1}{2}$ cents per 100 pounds to.....	2 stations.
Advance of $4\frac{1}{2}$ cents per 100 pounds to.....	3 stations.
Advance of 5 cents per 100 pounds to.....	3 stations.
Not advanced.....	130 stations.
Total.....	290 stations.

As an illustration of the earnings received by the carriers from the rates from these three producing sections, Portland, St. Louis, and the gas-belt district, to the Burlington stations, an exhibit filed at the hearing shows the average per-ton-per-mile revenue derived from the different rates as follows: The present Portland rate yields 9.1 mills; the present St. Louis rate, 7.6 mills; and the present rate from the gas belt, 10.4 mills; while the proposed advances from Chanute and Iola in the gas belt would yield 12.4 mills. It is shown that the

character of the haul from Portland to the Nebraska points is over mountainous grades and that it is a two-line haul, as is the haul to these points from the gas belt, and it appears from the annual report that the average per-ton-per-mile revenue on the Burlington for all traffic in 1909 was 7.89 mills, which is lower than the earnings on cement to many of the stations, certain of which are shown in the table hereinbefore given.

As to the rates between the gas-belt points and the Colorado common points, the carriers in presenting their justification of these new rates and charges state that originally cement from Missouri River points to Colorado points took the class-C rate in the western classification, which was 40 cents per 100 pounds. There was no movement under this rate, and a commodity rate of 20 cents was established applicable to mixed shipments of various building materials, such as cement, lime, plaster, and stucco. The first commodity rate on cement from points in the Kansas gas belt proper to Colorado points was a rate of 20 cents, established December 18, 1900. It is not claimed that there was much, if any, movement on this rate. The following year, in September, 1901, this rate was reduced to 15 cents in order to meet the competition of a cement plant established at Portland, Colo., just west of Pueblo, the rate from Portland to Colorado points having been fixed at 5 cents. This 15-cent rate remained in effect for seven years. In 1908 the rates from the Kansas gas belt to Colorado points, and from Portland to the same points, were increased to 17.5 and 7.5 cents, respectively. Within a few months the Portland rate was reduced to 5 cents without a corresponding reduction from the Kansas gas belt. In the suspended tariffs it is now proposed to make the rate from the Kansas gas belt 20 cents, and the rate from Portland 7.5 cents.

Although the carriers contend that it is now their purpose to place the rate from Kansas on the same basis as formerly, namely, 20 cents to Colorado common points, it appears that the 20-cent rate was in effect, many years ago, only for a period of nine months, and that there was no movement on it. The 15-cent rate was in effect for about seven years, during which the movement was heavy, and it has already sustained one increase, namely, in 1908, from 15 to 17.5 cents per 100 pounds.

Comparing the rates to Colorado points from the Kansas gas belt and from Portland to the same points, it will be noted that these rates were 15 cents and 5 cents, respectively, for seven years, and that this adjustment resulted in a difference of 10 cents in favor of the nearer mills. The gas belt producers were thereafter subjected to an advance to 17.5 cents, and although the rate from Portland was at the same time advanced to 7.5 cents, it was shortly restored to 5 cents, thereby resulting in a material change in the long-standing relationship of

rates to the disadvantage of the gas belt. It can hardly be contended that the rate from the Kansas gas belt, which is now 2.5 cents per 100 pounds, or approximately 17 per cent higher than it was for seven years, has been forced down to an unremunerative basis.

The history of the rate from the Kansas gas belt to Colorado common points seems to indicate that the carriers have been trying to reach an adjustment through a process of experimentation, starting out with a rate of 20 cents, which was found to be so high that the traffic would not move. The rate was thereupon reduced to 15 cents, where it remained for a period of seven years, during which time there was a marked development in the cement industry in the gas belt and a heavy movement thence to the Colorado points. The industry having become well established and the cement moving freely on the 15-cent rate during these years, the carriers then advanced the rate to 17.5 cents. The traffic continued to move at that rate, and it is now proposed to advance the rate to 20 cents, which would mean a total advance of $33\frac{1}{3}$ per cent over the rate which obtained during a long period when the movement was heavy. To such points as Boulder and Greeley, north of Denver, where there is said to be a very large consumption of cement in connection with extensive irrigation projects, the advance is as much as 5 cents per 100 pounds.

With the exception of the tariffs naming new rates and charges upon cement originating at Portland, Colo., and of the Southwestern Lines Tariff, and the tariff naming rates from Bonner Springs and Yocemento, hereinafter referred to, we have not been convinced of the propriety of the new rates and charges named in the schedules of rates suspended in this proceeding, and we shall ask the carriers to withdraw the proposed tariffs forthwith. If such action be not taken on or before the 15th day of May, 1911, the Commission will issue an order directing the maintenance of the present rates for a period of two years from that date. It is suggested, however, that inasmuch as there has been an apparent attempt in many of the tariffs to realign the rates and correct certain irregularities, it would be better for the carriers not to render it necessary for the Commission to issue an order in connection with these rates, as the matter will then be left open for such readjustments as the carriers may desire to make from time to time, always being guided, however, by the conclusions herein announced, but without being bound by an absolute order prescribing the present rates for a period of two years.

Concerning the advances which have been published from the Portland, Colo., producing district, the carriers which are parties to the tariffs appeared at the hearing and defended the proposed new rates. The producers at those points, however, did not attend the

hearing and have entered no appearance in the present investigation. It does not appear that the new rate from Portland to Denver of 7.5 cents, upon which there is a very considerable movement, is too high when compared with a rate of the same amount from Iola to Kansas City, upon which there is also considerable movement, the former haul being the longer and more difficult. Upon the record we are not convinced of the impropriety of the new rates and charges stated in these particular tariffs, and, therefore, the order suspending them will be canceled without prejudice and they will be permitted to go into effect.

Another tariff which has been suspended, but concerning which there seems to be no reason for its further suspension, is Southwestern Lines Tariff I. C. C. No. 737, Supplement 6, to which a large number of carriers are parties and which names new rates from Kansas City territory and points in Kansas and in Oklahoma to points in Texas. This tariff appears to be merely a realignment of rates already in effect and to contain only such modifications of previously existing rates as are necessary to bring about the equalization desired. In the process of realignment some advances have occurred, but these apply to only a small proportion of Texas destinations. Upon the record, the order suspending this tariff will be canceled without prejudice.

What is said concerning the tariffs mentioned in the two foregoing paragraphs is true in a general way of tariffs I. C. C. No. 2318 (Sup. No. 2), 2346, and 2348, filed by the Union Pacific Railroad Company, naming rates from Bonner Springs and Yocemento, Kans., to points in Colorado, Iowa, Kansas, Missouri, Nebraska, Wyoming, and New Mexico. The Union Pacific, through its witness, explained the changes contained in these particular tariffs as being more an effort to republish cement rates upon a somewhat more scientific basis than as an attempt to increase the rates therein, and we find, upon examination of said tariffs, that they contain many reductions and readjustments of this nature. Indeed, one producer at Yocemento appeared and testified as to the general fairness of the new rates named in these tariffs. Upon the record, the order suspending them will be canceled without prejudice.

No. 2910.
JOSEPH PETERS
v.
OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted December 28, 1910. Decided March 11, 1911.

1. A rule in the tariff providing that shipments of coal should not be weighed except at point of origin found unreasonable.
2. Charges assessed for the transportation of coal from Diamondville, Wyo., to Anaconda, Mont., found to have been unjust and unreasonable because assessed on overweights. Reparation awarded.

James A. Walsh for complainant.

J. L. Wines and *P. L. Williams* for Oregon Short Line Railroad Company.

J. C. Maring for Butte, Anaconda & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is engaged in the coal business at Anaconda, Mont., under the name of Washoe Coal Company. The petition, filed October 19, 1909, alleges that charges collected by defendants for the transportation of coal in carloads from Diamondville, Wyo., to Anaconda, Mont., were unjust and unreasonable because they were assessed upon a greater tonnage than the shipments in fact contained. Reparation is asked.

The record shows that during the period from September 26, 1908, to February 11, 1909, complainant caused to be shipped over defendant's lines from Diamondville to Anaconda 17 carloads of coal on which charges were assessed and collected at the rate of \$3.25 per ton, based on weights aggregating 1,665,200 pounds, stated in the waybills issued by the Oregon Short Line Railroad Company, the initial carrier. The total charges amounted to \$2,705.95. The shipments were reweighed at destination by the Butte, Anaconda & Pacific Railway Company, and a shortage was disclosed as to each car, which amounted in the aggregate to 90,940 pounds. Reparation is asked for the difference between the charges exacted and charges that would accrue if based on the actual tonnage of the shipments.

There is no question that the stated shortage in fact existed. The complainant's evidence clearly so shows, and nothing was offered to the contrary. The delivering carrier admits its liability. The initial carrier denies liability, and places its defense upon a provision in its tariff, as follows:

Item 8.—Weighing coal.—Charges must be assessed by using weights obtained by weighing over track scales at point of origin, subject to minimum weights provided in tariff. In weighing coal, billing agents must show gross, tare, and net weights on all waybills in the usual way and must indicate in every case whether actual or marked tare is used. Shipments covered by such waybills must not be reweighed.

The defense offered is that under this provision there was no authority to reweigh the coal at destination, and that under the terms of said provision complainant is absolutely bound by the weights given at the point of origin and as stated in the waybills.

The actual weight of shipments constitutes the true basis upon which to assess transportation charges. The question is one of fact. As was said in *Potter Mfg. Co. v. C. & G. T. Ry. Co.*, 5 I. C. C. Rep., 514:

The question is one of fact to be determined in a manner just to both parties, and as to which the *ex parte* action of either party can not conclude the other.

The provision in the tariffs that "shipments covered by such waybills must not be reweighed," is in our opinion a manifestly unjust and unreasonable requirement and constitutes no valid defense in a case where the question at issue is the correct weight upon which transportation charges are to be assessed.

Upon the record, we are of opinion and find that the charges assessed and collected were unreasonable to the extent that they exceeded charges that would have accrued if assessed upon the actual tonnage of the shipments as shown by the evidence. An order will be entered requiring the Oregon Short Line Railroad Company to cease and desist from enforcing the requirement of its tariff provision herein condemned, and awarding reparation in the sum of \$147.78, with interest from March 1, 1909.

20 I. C. C. Rep.

No. 3073.

SWEENEY, LYNES & COMPANY

v.

NEW YORK, PHILADELPHIA & NORFOLK RAILROAD
COMPANY ET AL.

Submitted November 25, 1910. Decided April 10, 1911.

Defendants' rates for refrigeration of strawberries from Norfolk and Only, Va., and Pittsville and Marion, Md., found to be unreasonable, and maximum rates prescribed for future. Reparation denied.

Ernest W. Mitchell for complainant.

Thomas R. Willcox for New York, Philadelphia & Norfolk Railroad Company; Pennsylvania Railroad Company; and Baltimore, Chesapeake & Atlantic Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Chairman:

Complainant is a copartnership, engaged in the wholesale fruit and produce business at Boston. Its complaint, filed June 25, 1910, challenges the reasonableness of defendants' refrigeration rates on strawberries from Norfolk and Only, Va., and Marion and Pittsville, Md. Reparation is asked on an aggregate of 10 shipments during the month of May, 1908. The claim was submitted informally January 25, 1910. The following table presents the rate situation from 1905 to 1910:

1905.

From—	Thirty-two-quart crates.			Forty-eight-quart crates.			Sixty-quart crates.		
	Minimum crates.	Rate per crate.	Revenue per car.	Minimum crates.	Rate per crate.	Revenue per car.	Minimum crates.	Rate per crate.	Revenue per car.
Norfolk.. Marion, Only, and Pittsville.	300	Cents. 20	\$60.00		Cents.		100	Cents. 45	\$72.00

1906.

Norfolk.....	300	19	\$57.00				100	43½	\$69.00
Marion, etc.....									

1907.

From—	Thirty-two-quart crates.			Forty-eight-quart crates.			Sixty-quart crates.		
	Mini- mum crates.	Rate per crate.	Revenue per car.	Mini- mum crates.	Rate per crate.	Revenue per car.	Mini- mum crates.	Rate per crate.	Revenue per car.
Norfolk.....	300	<i>Cents.</i> 19½	\$58.50	200	<i>Cents.</i> 29	\$58.00	160	<i>Cents.</i> 36	\$57.60
Marion, etc.....	300	17	51.00	200	26	52.00	160	32	51.20
Pittsville.....	300	19	57.00	200	28½	57.00	160	36	57.60

1908.

Norfolk.....	300	19½	\$58.50	200	29	\$58.00	160	36	\$57.60
Marion, etc.....	300	17	51.00	200	26	52.00	160	32	51.20

1909.

Norfolk.....	300	18	\$54.00	200	27	\$54.00	160	34	\$54.40
	250	20	50.00	166	30	49.80	133	37½	49.88
Marion, etc.....	300	16	48.00	200	24	48.00	160	30	48.00
	250	18	45.00	166	27	44.82	133	34	45.22

1910.

Norfolk.....	300	18	\$54.00	200	27	\$54.00	160	34	\$54.40
	240	20½	49.20	150	33	49.50	120	41	49.20
Marion, etc.....	300	16	48.00	200	24	48.00	160	30	48.00
	240	18	43.20	150	29	43.50	120	36	43.20

The above rates for 1905 and 1906 were testified to by defendants at the hearing. There were no refrigeration tariffs filed prior to 1907. It will be noted that in 1909 and 1910 there are two minima with different rates per crate. Taking the 60-quart minima from Norfolk in 1910 as representative, defendants explain that the 120-crate minimum and rate apply on shipments in excess of 120 crates unless the 160-crate minimum and rate make a lower aggregate charge. Thus, as the per-car charge for 160 crates at 34 cents is \$54.40, 132 crates would be charged at the 41-cent, or 120-crate, rate, inasmuch as the revenue per car would be \$54.12. On the other hand, as the charges on 133 crates at 41 cents, the 120-crate rate, would amount to \$54.53, or in excess of the 160-crate minimum charge, the latter basis would be substituted. Upon examination we find that defendants' refrigeration tariff provides that "all rates apply on minimum of packages shown and will be charged for whether car contains the minimum or not, excess to be charged in proportion." Under this rule apparently the 120-crate minimum would apply only on shipments of less than that quantity and the 160-crate minimum on any number of crates in excess of 120. This rule should be amended to definitely express the intent of the carriers as evidenced by their present practice.

Upon basis of the estimated weight per crate, the lower minima are approximately 12,000 pounds and the higher minima 15,000 to 16,000 pounds. The distance from Norfolk to Boston is 576 miles, and from the other points an average of about 100 miles less.

Upon consideration of the whole record we find that defendants' refrigeration charges as applied to the minima in effect are unreasonable to the extent they exceed the following:

From—	Thirty-two-quart crates.		Forty-eight-quart crates.		One-hundred-and-sixty-quart crates.	
	Mini-mum crates.	Rate per crate.	Mini-mum crates.	Rate per crate.	Mini-mum crates.	Rate per crate.
		Cents.		Cents.		Cents.
Norfolk.....	300	16	200	24	160	30
	240	18	150	29	120	36
Marion, Only, and Pittsville	300	15	200	22	160	28
	240	17	150	27	120	34

We do not think this is a case in which reparation should be awarded. In the case of *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, we said:

A rate reasonable in view of the circumstances and conditions when it is established may in course of time become unreasonable by virtue of changed circumstances and conditions. It is manifestly impracticable for the carriers or the Commission in such a case to determine at what exact time in the gradual process of changes the rate becomes unreasonable. * * * It would be a manifestly harsh rule that would assume a rate now condemned as unreasonable to have been so for a period of two years, or that of the statute of limitations, in the past as a basis for the payment of money by the carriers on past shipments, especially when no complaint had been made against them within that period. Certain it is that the law establishes no such presumption, nor is it a necessary sequence that the rate has been unreasonable for any period in the past. Neither does it seem that the bona fide action of the carriers in the necessary exercise of their judgment within reasonable limits should always be at their peril of liability for reparation for the difference between rates initiated upon their judgment and later changed upon the judgment of the Commission. Therefore the awarding of reparation by no means necessarily follows the reduction of a rate, whether by the voluntary action of the carriers or by order of the Commission.

Accepting the testimony as to the 1905 and 1906 rates as correct, there have been gradual reductions from 1905 to 1908, and this downward tendency is continued in 1909 and 1910, both in the reduction of the rate and the establishment of alternative minima. In view of these gradual and material concessions, the defendants must be presumed to have acted in good faith in the exercise of their judgment, and the present record is not convincing that an order for reparation should issue.

An order will be entered in accordance with these views.

No. 3358.

BOOKWALTER WHEEL COMPANY

v.

TENNESSEE CENTRAL RAILROAD COMPANY ET AL.

Submitted February 25, 1911. Decided May 1, 1911.

Claim for reparation based on alleged misrouting of shipment from Fourteen Mile Switch, Tenn., to Miamisburg, Ohio, denied. Complaint dismissed.

C. L. Bookwalter and *C. S. Brady* for complainant.

Thomas W. White for Tennessee Central Railroad Company.

M. R. Waite for Cincinnati, Hamilton & Dayton Railway Company.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

The complainant is a corporation engaged in the manufacture of vehicle wheels at Miamisburg, Ohio. By complaint, filed June 25, 1910, it alleges that it has been charged an unreasonable rate on a shipment, September 6, 1909, of one carload of rough hickory rim strips from Fourteen Mile Switch, Tenn., a station on the Tennessee Central Railroad, to Miamisburg, Ohio. The car arrived at Miamisburg over the Cincinnati, Hamilton & Dayton Railway. Complainant contends that delivery should have been made by the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter designated the Big Four, and seeks refund of a switching charge of \$27.96 incurred in order to secure such delivery.

There is no railroad agent at Fourteen Mile Switch and the conductor of the freight train received the car on September 6 with written instructions showing consignee, Bookwalter Wheel Company, destination, Miamisburg, Ohio, but no routing. The car was hauled to Monterey, Tenn., the nearest agency station, where the instructions were given to the agent of defendant Tennessee Central, who on the same day waybilled the car to destination via the Cincinnati, Hamilton & Dayton. From Monterey the car moved over the Tennessee Central Railroad to Emory Gap, Tenn.; Cincinnati, New Orleans & Texas Pacific Railway to Cincinnati; Cincinnati, Hamilton & Dayton Railway to Miamisburg. It was refused by consignee because of wrong delivery. At Miamisburg there was no physical connection

between the Cincinnati, Hamilton & Dayton and the Big Four. The car was therefore switched by the Cincinnati, Hamilton & Dayton to Dayton, delivered to the Big Four and returned via that road to Miamisburg, where a charge of \$27.96 for the switching service was collected in addition to the rate for the transportation from point of origin to Miamisburg on the Cincinnati, Hamilton & Dayton. The rate from Fourteen Mile Switch to Miamisburg via either the Cincinnati, Hamilton & Dayton or the Big Four was 21½ cents per 100 pounds. The car left the line of the Tennessee Central at Emory Gap on the morning of September 7, and reached Miamisburg on the line of the Cincinnati, Hamilton & Dayton on September 10.

The complainant asserts that the consignor, on September 7, presented to the agent at Monterey a bill of lading of that date showing origin, "14 Mile Switch;" consignee, "Bookwalter Wheel Co.;" destination, "Miamisburg, Ohio;" route, "Big Four delivery;" that it was signed by the agent and returned to consignor, but notwithstanding the fact that the agent the day before had voluntarily routed the car Cincinnati, Hamilton & Dayton delivery, no effort was made by him to correct his routing. It is contended that this alleged dereliction on the part of the agent resulted in the misrouting and consequent overcharge.

The Tennessee Central asserts that the bill of lading, though dated September 7, was not actually presented to the agent until September 10, by which time the car had reached destination, and that it was justified, in the absence of any routing instructions whatever, in routing the car Cincinnati, Hamilton & Dayton delivery, via which route the rate to destination was as low as via the route claimed by complainant.

At the hearing the agent at Monterey testified that before way-billing the shipment he asked the shipper what delivering carrier he wanted at Miamisburg and was informed that he did not know. The agent wired his general freight agent for information as to rate divisions and route and was instructed to waybill the car via Cincinnati, Hamilton & Dayton. This was done, and the agent stated that he next heard from the shipper on September 10, when he telephoned about the car, and that afternoon brought the bill of lading; that he signed the bill of lading without noticing the date, September 7, but could not say that the routing "Big Four delivery" was on it at that time; that if he had noticed the routing he would not have signed the bill of lading, in view of his previous action in billing the car via the Cincinnati, Hamilton & Dayton. The complainant submitted in evidence the original bill of lading and one of the two carbon copies thereof. Both of these exhibits indicate that the notation "Big Four delivery" is in a writing different from the other writing thereon and that an erasure was probably made before such routing was inserted.

The agent further stated that he knew it was on the 10th of September that the bill of lading was presented, because he went ahead, after receiving the telephone call from the shipper on the morning of the 10th, and made another waybill for the car, thinking it was still at Fourteen Mile Switch, and when the bill of lading arrived in the afternoon he found the car had already moved on the waybill made out on the 6th; that he thereupon voided the second waybill and the impression copy thereof contained in his records. This impression copy, which was submitted in evidence, bears date of September 10, and is marked "void account duplicate W. B. 17." The impression copy of the original waybill of September 6, also submitted, is numbered "17."

The complainant makes no allegation that there was any understanding or agreement between it or the consignor and the Tennessee Central that shipments tendered without specific terminal delivery instructions would be routed via the Big Four. The Tennessee Central states that its records show that four cars of hickory rim strips moved from Fourteen Mile Switch to complainant at Miamisburg during the period from March, 1909, to March, 1910, and on none of them did the shipping instructions specify terminal delivery. No evidence was offered by the complainant in rebuttal of the agent's testimony or in explanation of the apparent fact that the insertion on the bill of lading of "Big Four delivery" is in a writing different from the other writing shown thereon. On the record we can not hold that the allegations of the complainant have been sustained, and that any of the defendants herein misrouted the shipment in question. The agent was careless in signing, on September 10, a bill of lading dated September 7, but his action, regardless of whether the routing "Big Four delivery" was then in the bill of lading, can not render his company liable for misrouting, because on September 10 the shipment was in the possession of the Cincinnati, Hamilton & Dayton Railway.

An order of dismissal will be entered in accordance with these conclusions.

20 I. C. C. Rep.

No. 978.

E. SONDHEIMER COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted March 30, 1911. Decided May 1, 1911.

Upon the facts disclosed by the record; *Held*, That complainant is entitled to reparation in the sum of \$8,827.39, as damages resulting from the unjust discrimination against lumber shipments through Cairo which was condemned in the original report in this case.

Marsilliot & Murray for complainant.

Charles N. Burch for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

The original report in this case, 17 I. C. C. Rep., 60, disposed of all questions at issue except the claim for reparation, and the case was held open to permit complainant to prove what damage, if any, it had sustained by reason of the undue preference of Memphis over Cairo, which was condemned in the original report. Complainant has now submitted in detail its claim for damages, and the items thereof have been verified by defendants' accounting officers. Hearing has been had on the claim for reparation, briefs have been filed, and the case has been argued orally before the Commission.

The undisputed evidence is that during the time when Cairo was subjected to undue prejudice upon shipments of lumber complainant was forced to reduce or shrink its profits on lumber handled through Cairo by an amount equal to the advantage in freight rates enjoyed by the Memphis dealer, and its claim for reparation is based upon the advantage in freight rates which accrued to the Memphis dealer. Each of the shipments included in the claim was sold by complainant f. o. b. point of destination. That is to say, complainant quoted to its customer a price on each carload of lumber which included the freight charges to destination. Upon receipt of the lumber, the purchaser remitted to complainant the amount of the invoice, minus the freight charges, and such amount was accepted by complainant in settlement of the account. It is therefore clear

that complainant actually paid the freight charges upon the shipments which are included in its claim.

The claim consists of a statement showing the weight and freight charges upon numerous carloads of lumber shipped by complainant between May 13, 1903, and September 8, 1908, from Cairo to the competitive territory defined in the original report; and in connection with each shipment out of Cairo there is shown the movement of an equivalent amount of lumber into Cairo from points on defendants' lines in Mississippi, together with the weight of and freight charges upon the inbound shipment. Defendants admit the movement of the lumber and payment of charges into Cairo as set forth in the exhibit, and complainant has submitted bills of lading and paid freight bills covering each item thereof. Upon this showing complainant has undoubtedly established *prima facie* the fact that it was damaged by the unlawful adjustment of rates as between Cairo and Memphis, and has indicated with mathematical accuracy the measure of its damage. Therefore it remains to be determined whether the arguments relied upon by defendants in support of their contention that reparation should not be awarded are well founded.

1. Defendants assert that no legal basis for reparation has been established because the damages sought by complainant are speculative and uncertain. They contend that it is in the very nature of things impossible for complainant to say in respect of the sale of lumber in a large consuming market, such as Chicago, just to what extent, if any, the price was controlled by Memphis prices, or to what extent it was controlled by the prices at other lumber markets, such as Nashville, Louisville, Evansville, and St. Louis.

In the original report we found that Memphis is the largest wholesale hardwood market in the United States, and that it enjoys certain privileges in respect of yarding, grading, and sorting in transit not accorded to other lumber markets which draw their material from the same producing territory. This being true, it is a fair conclusion that a dealer not located at Memphis who purchases his lumber from the same territory as a Memphis dealer must meet the Memphis dealer's price in the sale of substantially all his lumber at competitive consuming points. It may be true that in certain instances lumber sold by complainant was not at a disadvantage in competition with Memphis, because it may have been drawn from a producing point or sold at a consuming point where Cairo had a natural advantage over Memphis. But it must be remembered that this claim for reparation is limited to an amount of lumber equivalent to the amount purchased by complainant at points in Mississippi where both Cairo and Memphis dealers were in the market for the purchase of lumber. And as to lumber bought in Mississippi territory and sold in competitive consuming territory, we think it clear that the Cairo dealer had to

meet the Memphis prices or lose the business. It follows, therefore, that the profits to which he was reasonably entitled were diminished to the extent of the unlawful advantage in freight rates enjoyed by the Memphis dealer.

2. Defendants assert that reparation should not be awarded because the identity of the inbound and outbound shipments of lumber was not preserved at Cairo, and there is no proof that the outbound lumber from Cairo was the same lumber that was shipped into Cairo from Illinois Central and Yazoo & Mississippi Valley points.

As heretofore noted, complainant's claim for reparation relates to lumber shipped from Cairo to various points in the territory covered by the old Memphis reconsigning tariff. The bills of lading covering these shipments from Cairo have been produced in evidence and shown to correspond in quantity with the bills of lading and expense bills on lumber from various points on the Illinois Central and Yazoo & Mississippi Valley railroads into Cairo. It is not contended by complainant that the lumber actually shipped out of Cairo is the same lumber that was shipped from said points of origin into Cairo. For reasons stated in the original report, it was and is impracticable to preserve the identity of the inbound and outbound lumber at the yarding point, and no such requirement was a prerequisite to securing the reshipping rate out of Memphis under the old tariff. As we found in the original report, considerable lumber is brought into Cairo by river, while a comparatively small amount moves into Memphis by river. All of this lumber, received by both river and rail, was indiscriminately yarded, stacked, and graded at both Cairo and Memphis. It is true that the Memphis reconsigning tariff did not apply to lumber received at Memphis by river; but, when once piled in the yards at Memphis, there was no way of determining what proportion of the contents of an outbound carload of lumber consisted of river lumber or lumber received by rail. And, as we understand it, lumber which did not move into Memphis over defendants' lines could have been and was shipped out over their lines at the reconsigning rates by the improper manipulation of expense bills. The Memphis dealer not having been required to preserve the identity of the lumber so yarded, we fail to see how it can reasonably be said that reparation should be denied complainant in this case because it did not do what was not required of its competitor at Memphis.

Complainant has presented only shipments covered by inbound paid freight bills from points on defendants' lines, and it has shown that an equivalent amount of lumber moved from Cairo to destinations within the territory involved.

Moreover, the damage resulting from undue prejudice is of necessity only partially measured by the disparity in rates as applied to the traffic actually moved and that there is usually present in such

cases an element of damage, due to inability of the shipper to compete in common markets, which, by reason of its speculative character, can not become the subject of reparation. We, therefore, feel that complainant may reasonably estimate its damages upon the basis of the traffic actually handled from the territory of production to Cairo and the reshipment of an equivalent amount to the territory of consumption involved in this proceeding.

3. Defendants contend that while, under the old reconsigning tariff, Memphis had the advantage of Cairo at many points of destination, Cairo also had the advantage of Memphis at many points of destination, and that these advantages of Cairo are such as to prevent the conclusion that on the whole Memphis had the advantage or that complainant suffered any loss. The former report of the Commission indicates that in the rate tables there set forth the reconsigning combination on Memphis produced lower rates than the combination on Cairo in 138 instances; and that under the newly issued tariff the reconsigning combination on Memphis produces lower rates than the combination on Cairo in 47 instances. Owing to the thousands of rates involved, it is impracticable to set them forth in detail in this report, and we can only say that, from an examination of the rates, and of the loose provisions of the old Memphis reconsigning tariff under which manipulation of inbound expense bills was possible, it seems clear that Cairo had the advantage in rates between the points in question in few, if any, instances, and that under the old tariff any rate figured into and out of Memphis on basis of the reconsigning rates then in force was more or less a paper rate, because of the possible manipulation. Therefore the tables relied upon by defendants to prove that in certain instances Cairo had the advantage in rates can not be accepted as showing the actual situation. Moreover, the claim presented by complainant relates only to points as to which Cairo was at a disadvantage. It is fairly to be assumed that as to points where Cairo had an advantage in rates, if any existed, it must have been based upon some valid reason, otherwise the rate would have constituted an undue discrimination against Memphis. In preparing its claim, complainant has used as a basis of comparison the difference between the rate from point of origin to Cairo plus the rate from Cairo to destination as compared with the rate to Memphis plus the old reconsigning rate from Memphis; that is, the paper rate via Memphis. While under the loose practices which were possible under the old Memphis tariff it is now out of the question to determine what rates were actually paid by shippers through that point, or to determine definitely the exact extent of the discrimination against Cairo, as opposed to the advantages and disadvantages indicated by the tariffs on file, we are not inclined to accept defendants' contention on this point; for that would amount merely to deciding that complainant

should be denied reparation in respect of traffic which was the subject of unjust discrimination because on certain other traffic it received the rates to which it was fairly entitled. In our opinion no such theory of the administration of the act to regulate commerce is tenable.

4. Defendants contend that complainant has been guilty of laches. This contention is without merit. The complaint was filed February 2, 1907, within a reasonably short time after the Commission was empowered by law to deal effectively with rate discriminations. On April 23, 1907, complainant filed an amendment to its petition, setting forth its claim for reparation; but by order of the Commission the details respecting the claim for reparation were not put in evidence until the main question, whether or not Cairo was subjected to undue prejudice, had been determined. That point having been decided in the affirmative, complainant proceeded seasonably to present proof of its damages. Inasmuch as the claim was filed within one year after the passage of the law of June 29, 1906, the claim is not limited to causes of action which accrued within two years prior to filing the complaint, and, as we understand it, all of the shipments involved in the claim are within the statute of limitations upon actions of this nature within the state of Illinois.

5. Defendants contend that reparation should not be awarded because the proper parties are not before the Commission, and allege that connecting carriers participated in the so-called shrinkage of the rates from Memphis under the old reconsigning tariffs. Depositions were taken upon this point, but the testimony is vague and conflicting, and we are unable to make a definite finding as to whether the connecting lines did or did not, as a rule, participate in the shrinkages. It is rather suggested by the record that certain lines did participate in the shrinkage and others did not, dependent upon the agreements respecting divisions of joint rates between the several carriers. We are of opinion, however, that determination of that point is immaterial to this case. The Memphis tariff was issued and maintained by the defendants, although connecting carriers were parties to it. In *Independent Refiners' Asso. v. W. N. Y. & P. R. R. Co.*, 6 I. C. C. Rep., 378, we held that carriers under a joint rate are severally liable for damages resulting from any violations of the act in which they participate, and that where the law specifically provides for the individual liability of any carrier concerned for the full amount of damages sustained through enforced payment of excessive transportation charges or other practices made unlawful by the statute, it is not necessary to have all the carriers over any particular route before the Commission to enable it to direct reparation for wrongs which have been inflicted upon shippers under any such charges or practices. In this respect the law is the

same to-day as when that point was decided by the Commission, and we are of opinion that an award for any damages sustained by complainant in connection with this traffic may run against the carriers now before us.

6. The parties do not agree upon what basis, if any, reparation should be awarded, because of the language used by the Commission in announcing its conclusion in the original report, which was as follows:

Considering all the circumstances in this case, we find that the rates on shipments of lumber in carloads charged Memphis shippers, under the provisions of the tariff in effect when this complaint was filed, for the transportation of lumber via Memphis from competitive producing points in the state of Mississippi to competitive consuming points in the territory involved, when lower than rates from and to the same points via Cairo were unduly discriminatory against complainant and other Cairo shippers to the extent that they *exceeded* the rates now in effect between the same points via Memphis and were therefore unlawful.

Complainant assumes the meaning of the Commission to have been, and has figured his claim upon the theory, that the Commission condemned the old tariff to the extent of the difference between the former Memphis reconsigning combination and the combination of rates into and out of Cairo. That assumption, however, is erroneous. As will be observed by reading the original report, the Commission found that the present Memphis tariff removed the unlawful discrimination against Cairo which had existed under the previous tariff. It is therefore apparent that the proper measure of the damage to complainant is the difference between the old and new Memphis tariffs. Upon the basis used by complainant its damage in connection with the shipments covered by Exhibit No. 2 amounts to \$12,392.92. Upon the basis we have just stated, its damage amounts to \$8,827.39.

The exhibit giving details respecting the shipments upon which reparation is asked is too extensive to be set forth in this report. But inasmuch as there is no dispute respecting the shipments, or the figures contained in that exhibit, we deem it unnecessary to make detailed findings in respect of each shipment. Therefore, we find that in connection with the shipments set forth in complainant's Exhibit No. 2 the rates assessed by defendants under the tariffs then in force resulted in undue prejudice against complainant and in damage to it in the sum of \$8,827.39, and that complainant is entitled to reparation from defendants in that amount, with interest from April 23, 1907, the date when complaint was filed. An order will be entered accordingly.

20 I. C. C. Rep.

No. 3997.

FREEMAN LUMBER COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Decided May 1, 1911.

Commission's announcement that reparation will not ordinarily be awarded in a formal case attacking a rate as unreasonable, or otherwise in violation of law, unless intent to claim reparation is specifically disclosed therein or in an amendment thereof filed before the submission of the case, adhered to.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

In case No. 2691, *Freeman Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 19 I. C. C. Rep., 348, the Commission considered and passed upon a complaint, filed July 12, 1909, in which it was alleged that in the readjustment of rates on lumber from producing districts in Arkansas and vicinity defendants had changed the relative adjustment of rates as between complainant's shipping point and other shipping points, to the disadvantage of complainant. The prayer of the complaint was that defendants be required to restore the rates previously in effect as per certain specified tariffs. The record does not disclose any suggestion of a demand for reparation or of intent to make such demand.

While the allegations of that complaint put in issue the rates on cypress and hardwood lumber from Gleason, Ark., to all points of destination named in the tariffs referred to, it developed at the hearing that complainant's real grievance was against the then existing rates from Gleason to the Missouri River crossings and to certain Mississippi and Ohio River crossings.

The order of the Commission required the establishment of named rates to certain points in Missouri, Kansas, Nebraska, and Iowa, and to St. Louis, Mo., and Cairo and Thebes, Ill., on cypress lumber. Defendants' adjustment of rates on hardwood lumber was sustained.

In a complaint, filed April 6, 1911, against the St. Louis, Iron Mountain & Southern Railway Company and the Missouri Pacific Railway

20 I. C. C. Rep.

Company, this same complainant now prays for reparation on shipments of cypress lumber in the sum of \$629.50, based upon the findings of the Commission in case No. 2691, *supra*.

In order to avoid multiplicity of actions and consequent unnecessary labor and expense, and in order that defendants as well as the Commission might have due notice of the full extent of a complaint and the effect of an order thereunder, the Commission, prior to the filing of the complaint in case No. 2691, *supra*, adopted an announcement that reparation will not ordinarily be awarded in a formal case attacking a rate as unreasonable or otherwise in violation of law unless intent to claim reparation is specifically disclosed therein or in an amendment thereof filed before the submission of the case. Complaint in case No. 2691, *supra*, was filed July 12, 1909, the case was submitted April 17, 1910, and decided June 10, 1910. The prayer for reparation is filed April 6, 1911, and, as before stated, this is the first suggestion of intent to claim reparation in connection with the previous proceeding.

The Commission is not a court. Its proceedings partake somewhat of a judicial or semijudicial character, but its work is distinctively administrative. It should and must consider the necessary effect of an order entered by it, and is not bound by the limits of the record in the case immediately under consideration. The prime purposes of the act can not be carried into effect if the Commission and the defendants in proceedings before it are not fully and fairly put on notice as to the extent of the claims presented in, and necessarily connected with, the complaint. A demand for reparation on a single shipment standing by itself might be treated by the defendants as an unimportant matter and a record so made might and very probably would omit some more or less important facts or considerations which would have been disclosed on a more careful trial if the number of shipments and the amount of reparation were large. It is obvious fairness that complainants be required to disclose their whole case, and the demands upon the time of the Commission are so many and pressing that unnecessary multiplicity of proceedings can not be encouraged or even tolerated.

Applying the above-noted announcement of principle and procedure to this case as it has been applied to others of similar nature, it is apparent that this complaint can not be further proceeded with.

No. 3596.

WILLIAM D. SHOEMAKER

v.

CHESAPEAKE & POTOMAC TELEPHONE COMPANY.

Submitted March 18, 1911. Decided April 3, 1911.

1. As between subscribers to a telephone service who are similarly situated, nothing but a difference in the service rendered or facilities furnished can justify a difference in the charges exacted.
2. The fact that a few subscribers connected with a new exchange were previously connected with another exchange which was abandoned by the defendant from motives of economy in management and efficiency of service is not such a dissimilarity of circumstances and conditions as to warrant the exaction of the current charges from a new subscriber while for the same service and facilities the old subscribers continue to pay the lower charges formerly exacted at the old exchange.
3. The contracts between such old subscribers and the defendant, even though valid when made, can not, after Congress has undertaken to regulate the rates and practices of telephone companies, be accepted as now justifying different charges as between different subscribers similarly situated, such undue discriminations being forbidden by the act.

William D. Shoemaker for complainant in person.

Bernard Carter & Sons for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The act of June 18, 1910, extended the provisions of the act to regulate commerce to—

telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States to any other State, Territory, or District of the United States;

and such companies are declared by the amended act to be common carriers within the meaning and purposes of its provisions. This complaint is the first application to the Commission for the exercise of its newly conferred jurisdiction over that kind of interstate commerce and over the carriers that participate in it.

The petitioner lives in Montgomery county, in the state of Maryland, at a place called Drummond, which is within the municipal

boundaries of what is referred to on the record as the district of Bethesda. He has called upon the defendant to install a telephone at his residence so that he may have the benefit of the service that the defendant is offering to the general public. The defendant is entirely willing that the petitioner shall become a subscriber to its service and, as a preliminary to the establishment of that relation with him, has tendered for his signature a service contract, embodying the terms and conditions upon which all contracts are now being made by the defendant with new subscribers. But the complainant has declined to execute the agreement, and alleges that the defendant unlawfully discriminates against him when it refuses to install its service at his residence on the same terms that it now exacts from some of its subscribers who, as the complainant asserts, are similarly situated.

In order fully to understand the point in controversy it becomes necessary to state the history of the service that the defendant extends to residents of the place where the complainant lives.

On or about August 1, 1902, the defendant established a small office in Montgomery county, in the state of Maryland, at a point about one mile north of the boundary line separating that state from the District of Columbia. This exchange was intended to serve the adjacent localities in Maryland and persons residing just across the line in the District of Columbia. The charges demanded were \$24 a year for a direct or private line with an unlimited service, and \$18 a year for a so-called four-party line with a similar service. It was called the Somerset Heights exchange, and was, of course, connected with the other exchanges operated by the defendant, thus enabling the subscribers to reach all persons in the District of Columbia served by telephone. The subscribers, whether residing in Maryland or across the line in the District of Columbia, were required, however, in addition to the annual charges above mentioned, to pay a toll charge of 10 cents on each call to a subscriber to the defendant's service residing in the District of Columbia and not directly connected with the Somerset exchange; a similar toll charge was made for each call through an exchange in the District of Columbia to a subscriber to the Somerset exchange.

In consequence of the growth of the Somerset exchange and of the number of residents in the District of Columbia that were connected with it, the defendant deemed it expedient, in November, 1905, to remove the exchange to a point in the District of Columbia on the Tenleytown Road. Upon the completion of the new office, known as the Chevy Chase exchange, the Somerset office was abandoned and the telephones of all its subscribers were connected with the new office. The installation of the new exchange was followed

by some changes in the charges for the service. From the old Somerset subscribers who were transferred to the new exchange the defendant continued to exact the old Somerset rates; it appears also that a few new contracts were made with new subscribers residing in the district of Bethesda on the basis of the rates formerly demanded of subscribers connected with the Somerset exchange. All the old subscribers living in Maryland, as well as those residing across the line in the District, were still required to pay the 10-cent toll on all messages to subscribers in the District of Columbia not directly connected with the Chevy Chase exchange, but tolls were no longer charged on messages from the city of Washington to subscribers connected with the Chevy Chase exchange. In other words, all the subscribers to the old Somerset exchange, including those residing within the District of Columbia, besides getting the benefit without any additional charge of the more extended service offered by the Chevy Chase exchange, were also given the right to receive messages through other exchanges in the city of Washington free of toll charges. But, with the few exceptions mentioned, all new subscribers to the Chevy Chase exchange were required to pay to the defendant the regular District of Columbia rates, which are hereinafter explained in detail.

The growth of the new exchange at Chevy Chase and other conditions tending to economy and convenience in management led the defendant in June, 1908, to abandon that exchange also and to establish another exchange about half a mile farther south in the city of Washington. This is called the Cleveland exchange. All subscribers to the original Somerset and Chevy Chase exchanges, together with some 200 subscribers formerly connected with what is known as the West Washington exchange, were transferred to this new exchange. Again the service offered by the defendant was much extended by reason of the much larger number of subscribers connected with the new exchange; but, again, no additional charges were exacted from the original subscribers to the Somerset exchange, or from the new subscribers in the Bethesda district that were later attached to the Chevy Chase exchange on the basis of the original Somerset contracts. All other subscribers to the new Cleveland exchange are required to pay the regular District of Columbia rates as follows: For a direct line and an unlimited service, \$48 per year; for a direct line and 600 calls during the year \$39, additional calls being paid for at the rate of 5 cents each; and for a four-party line service, entitling the subscriber to 600 calls, \$36 per year, with the same provision for extra calls. To some 10 old subscribers residing just across the line in the District of Columbia, and formerly connected with the old Somerset exchange, and 27 old subscribers residing in Maryland who were for-

merly connected either with the old Somerset exchange or with the subsequently established Chevy Chase exchange, the defendant's service is furnished through the new exchange, as heretofore explained, on the basis of the old contracts.

It was after the installation of the new Cleveland exchange and after both the Somerset and the Chevy Chase exchanges had been abandoned that the complainant entered into negotiations with the defendant for the installation of a telephone in his residence at Drummond. Being a new subscriber, the defendant demanded for the service the District of Columbia rates. He declined to execute the contract and insisted on one in the form originally in use when the Somerset exchange was in operation. As a matter of fact it was beyond the power of the telephone company to enter into such an agreement for the reason that it now has no exchange at Somerset; nor can it offer the complainant a contract in the form offered to subscribers when the Chevy Chase exchange was in operation, for that exchange also has been abandoned. All the defendant can do for the complainant is to install a telephone at his residence and connect it with the new Cleveland exchange. This is what it is willing to do and this is what the complainant desires. But for such a connection and such a service the defendant demands the rates current in the District of Columbia and now required by it of all new subscribers to the Cleveland exchange, whether residing in the city of Washington or in the district of Bethesda. The complainant on the other hand is willing to pay for the service only on the basis of the original Somerset contracts. As some 37 of his immediate neighbors are now getting the more extended service through the Cleveland exchange on the basis of their original Somerset contracts, he demands the same service on the same terms, on the ground that he is similarly situated; and he contends that the refusal of the defendant to give him the service on that basis is an undue and unlawful discrimination against him.

The explanation of the situation made by the defendant is that it has been its policy whenever it becomes necessary to transfer subscribers from one exchange to another, where a higher charge is exacted, to continue to recognize its contracts with the old subscribers until they are eliminated gradually through the voluntary discontinuance of the service, change of locality, or a demand for a higher grade of service. That has been its position with respect to the remaining 37 original subscribers to the old Somerset exchange. Having abandoned that exchange for its own convenience it has not desired, as we understand the record, to impose higher charges on these old subscribers, notwithstanding the enlargement of the service that they enjoy through the new exchange. The defendant points out that since the opening of the Cleveland

exchange 189 new subscribers residing in Maryland have been added to it, all of whom pay the going rates for the District of Columbia.

On these facts the defendant submits for the decision of the Commission the question whether it may lawfully continue the service through the Cleveland exchange to the 37 original subscribers to the Somerset exchange on the original terms then enjoyed by them, or whether it must now require them to pay the going rates exacted of all other subscribers to the Cleveland exchange. In this connection we are advised that it is quite generally the practice of telephone companies throughout the country to deal with old subscribers in this way under similar circumstances.

It has been said not infrequently that the national legislation to regulate and control interstate traffic has resulted in largely increasing the revenues of the carriers. In some respects this is true. A railroad official competent to make an estimate has expressed the opinion that the provision in the law forbidding carriers to issue free interstate passes, except in certain specified cases, has had the effect of adding many millions of dollars a year to their revenues. Some millions of dollars are also doubtless saved to the carriers annually by reason of the provisions in the amended act and the accompanying legislation looking to the suppression of rebates. Moreover, their annual revenues are no longer diminished by reason of the unlawful discriminations and preferences formerly more or less generally practiced by carriers but now in large measure abandoned in connection with interstate traffic, because of the powers lodged in the Commission to enforce redress and secure punishment in such cases.

The conditions under which interstate traffic is now conducted are thought to be fairly clean and free from such practices, and to the extent that this is true the revenues of interstate carriers have necessarily been augmented. In using its powers to bring about a better observance of the law, the activities of the Commission have therefore resulted to some extent in increasing the revenues of railroad companies. And much remains to be done in the way of readjusting the practices of carriers that will further augment their earnings. Recent examinations by this Commission of the accounts and records of certain lines have disclosed the fact that while there is now a more or less general obedience of the provisions of law forbidding the use of free interstate transportation except in the special cases enumerated in the act, free state passes are nevertheless still issued by many carriers and to an extent and under conditions that shock the moral sense. The reports show not only that many state and federal judges, state and national legislators, marshals and sheriffs, mayors and postmasters, aldermen and county commissioners, and officials of other classes, as

well as large interstate and state shippers, are regularly supplied by some interstate carriers with free state transportation, but that such officials, shippers, and others do not hesitate in many cases to request, and sometimes to demand, personal favors of that kind. The examinations also reveal the fact that state passes are not infrequently used on interstate journeys. Such violations of law are said by railroad officials to be difficult to detect and prevent; some difficulties are also involved when it becomes necessary to make proof of them. But the abandonment by carriers of the practice of giving special favors and privileges of that kind would add largely to their revenues. There are also other ways not necessary here to describe by which carriers in connection with transportation within the boundaries of a state not only wrongfully impair their revenues but in principle violate the provisions that govern interstate traffic. One instance has come to our attention, and there are doubtless others, where a large interstate shipper by threatening to withdraw its interstate traffic from an interstate carrier and give it to another line induced the carrier to make unduly low rates on its extensive movements within a state. Much progress has been made, so far as interstate commerce is concerned and also in many of the states, in eliminating these evils; but, as we have indicated, ways still remain by which specially favored shippers may and do receive special advantages and privileges at the hands of carriers in connection with their state as well as their interstate traffic. These abuses are practiced to the disadvantage of the revenues of the carriers and when corrected, as they will be in time, the manifest result will be further to augment their earnings.

It is, however, a narrow view of the matter to test the value of this effort to rid interstate traffic of its evils and inequalities by the effect upon the revenues of the carriers; and those who say that such legislation has served no real public interest, wholly overlook the moral aspects of the question. The regulation of interstate carriers by the national government and of state carriers by the respective state governments involves the proposition that the construction and conduct of highways is essentially a matter for government, and not for purely private initiative. That general theory underlies all regulative legislation with respect to transportation. While a railway company is a person within the fourteenth amendment and its property private property to a well-defined extent, and as such entitled to the same protection that is accorded to other private property, it is equally well understood that the railroads are carrying on a public function and are operating highways for the public and are therefore subject to public regulation. This being the case, it is in the highest sense the duty of government to assure to all the

right to use such highways on just terms and, what is still more important, on equal terms. And this assurance is made effective only by the strict suppression of unlawful discriminations and preferences and special favors and privileges, regardless of the effect upon the revenues of the carriers. There is the further consideration that any increase in the revenues of carriers resulting from such efforts to enforce the law accrues also to the benefit of the general public, in that increased revenues enable the carriers to make larger expenditures looking to greater efficiency and more satisfactory service, and tend also to a reduction in rates and likewise enable the carriers to meet the rate reductions required by our orders, which during the past few years have been substantial both in number and extent, as the careful observer will not have failed to note.

These remarks are no less applicable to telephone and telegraph companies that serve the general public as common carriers. They are suggested by the fact that the case here before us, which seems to be altogether free from the element of intentional wrong, when disposed of according to the principles that underlie the law, will probably result in increasing the revenues of the defendant without being of any advantage to the complainant, except as the enforcement of the principles of equality and common right in the transactions between a public servant and the public is of fundamental advantage to all and therefore to him. Moreover, those principles when applied throughout the country, as necessarily they must be, may result in a more or less substantial addition to the revenues of other telephone companies that have been dealing with their old subscribers in the same way. For that reason we have thought it well to make some observations of this nature, particularly in view of the fact, as we have had frequent occasion to observe, that some carriers, when correcting, under the compulsion of our orders, preferences and discriminations that ought voluntarily to have been corrected without waiting for an order, are in the habit, when explaining their course to the favored shippers, of attributing the withdrawal of their special advantages and privileges to the intermeddling of the Commission rather than to the law itself and the principles of equality and fairness that it enforces.

Coming now to the merits of the question, it appears that this is in no sense a rate case and does not present any rate question for examination. The complainant does not allege that the current charges for the different grades of service offered and rendered to the public by the defendant through its Cleveland exchange or elsewhere are unreasonable. What the complainant contends is that the defendant can not lawfully demand the current rates of him while at the same time collecting less than the current rates from

some of his friends and neighbors at Drummond for precisely the same service. Some of his neighbors pay the current rates; the few others heretofore alluded to pay less than the current rates. He and the latter are similarly situated in all respects. The only difference between them is that some years ago they were subscribers to the Somerset exchange. It is obvious, however, that this is not a dissimilarity of circumstances and conditions upon which the defendant may lawfully base a difference in charges. The fact that they had been subscribers to an exchange since abandoned does not affect either the nature or the extent of the service that they now receive through the new exchange. What the complainant wishes is the same service and the same facilities, and what he demands is that there shall be exacted of him no higher basis of charges than are exacted at the same time from any of his neighbors. Although he may find that he has not endeared himself to his neighbors by presenting this matter to our attention, the complainant's attitude is entirely sound. The law expressly assures to him equality in rates and service at the hands of the defendant, and in standing upon his rights his complaint when properly considered makes for ultimate justice and is therefore a public service. The motives of the defendant in giving its service to the old Somerset subscribers at the old rates may perhaps readily be understood, but now that it has been brought within the provisions of an act that forbids preferences and discriminations, it is manifest that the defendant can not continue to demand of some residents in the district of Bethesda more than it demands for the same service rendered to others similarly situated. That its course of dealing, as between the old Somerset subscribers and the new subscribers to the Cleveland exchange in the district of Bethesda, has now become unlawful under the act seems so clear as not even to admit of discussion. Being a public servant, subject to the provisions of a law that forbids undue preferences and unjust discriminations on any grounds whatsoever, it is manifest that nothing but a difference in the service rendered or in the facilities furnished will justify any difference in the charges exacted, and that the defendant's demand upon the complainant for greater compensation for the same service and facilities subjects him to a discrimination that is undue and unjust.

It is not altogether clear from the record whether the contracts between the 37 old subscribers to the Somerset exchange are living contracts in the sense that they provide a term of years, not yet expired, during which the subscribers were to be entitled to the old rates in force at the Somerset exchange when the contracts were executed. But whatever may be the fact in that regard the contracts, now that the Congress has undertaken to regulate the rates and practices of interstate telephone companies, can not justify a violation

by the defendant of the provisions in the act forbidding unjust preferences and undue discriminations. This point was conclusively settled in *Armour Packing Co. v. U. S.*, 209 U. S., 56, 81, where the court points out that—

There is no provision excepting special contracts from the operation of the law. One rate is to be charged, and that the one fixed and published in the manner pointed out in the statute, and subject to change in the only way open by the statute.

The suggestion that an act of Congress which renders a previously valid agreement unenforceable or that impairs its value is subject to constitutional objections is fully met in *L. & N. R. R. Co. v. Mottley*, 219 U. S., 467, where the court says:

That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations is inconceivable. The framers of the constitution never intended any such state of things to exist.

And again, after citing numerous authorities, the court says:

They support the view that, as the contract in question would have been illegal if made after the passage of the commerce act, it can not now be enforced against the railroad company even though valid when made. If that principle be not sound, the result would be that individuals and corporations could, by contracts between themselves, in anticipation of legislation, render of no avail the exercise by Congress, to the full extent authorized by the constitution, of its power to regulate commerce. No power of Congress can be thus restricted. The mischiefs that would result from a different interpretation of the constitution will be readily perceived.

From the beginning this has been the construction placed by the Commission upon the provisions of the act in their relation to previously executed contracts that were valid when made. It follows therefore, whatever may be their terms either in regard to the charges to be paid or the time during which such charges would be exacted, that the contracts held by the 37 old subscribers to the Somerset exchange can not now justify the defendant in demanding of the complainant higher charges than it demands at the same time from such old subscribers, they and the complainant being similarly situated in all respects.

It is understood in what has been said that there is no difference either in the physical service or in the efficiency of the service now rendered by the defendant to the old Somerset subscribers and to its new subscribers residing in the same locality who pay the current District of Columbia rates. It must also be understood that nothing here said relates to the reasonableness of the rates exacted of subscribers to the Cleveland exchange or of the particular subscribers that reside in the district of Bethesda. We deal here only with the discrimination that has been pointed out.

An order will be entered in conformity with these views.

No. 3322.
GEORGIA FRUIT EXCHANGE ET AL.
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted December 27, 1910. Decided April 11, 1911.

The methods practiced by growers in Georgia in picking and packing peaches and loading the crates into cars for carriage to the northern markets, and the difficulties of refrigerating them in transit so as to avoid deterioration and rot, considered and discussed; upon the facts of record it is *Held*, That no grounds are shown for requiring the defendants to reduce their minimum carload weight on a 40-foot car from 22,500 pounds, or 535 crates, to 19,000 pounds, or 448 crates, as contended by the complainants.

Watkins & Latimer for complainants.

R. Walton Moore, M. P. Callaway, and F. W. Gwathmey for Southern Railway Company; Nashville, Chattanooga & St. Louis Railway; Atlantic Coast Line Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Georgia Southern & Florida Railway Company; Illinois Central Railroad Company; Central of Georgia Railway Company; Seaboard Air Line Railway; Atlanta & West Point Railway; Western Railway of Alabama; Cleveland, Cincinnati, Chicago & St. Louis Railroad Company; Augusta Southern Railroad Company; Charleston & Western Carolina Railway Company; Georgia Railroad; and Macon & Birmingham Railway Company.

W. A. Northcutt and N. W. Proctor for Louisville & Nashville Railroad Company.

Edgar J. Rich for New York, New Haven & Hartford Railway Company.

A. G. Jackson for Georgia Railroad.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The peach crop of Georgia moves to the markets east of the Mississippi and north of the Ohio and Potomac Rivers in refrigerator cars leased by the defendants for the season from the organization

20 I. C. C. Rep.

known as the Armour Car Lines. They are of modern type, 40 feet in exterior length, and have an interior capacity of 1,924 cubic feet, excluding the space occupied by the ice bunkers at either end. The minimum weight on this traffic when moved in cars of that length is 22,500 pounds, which is construed by the tariffs to mean 535 crates weighing 42 pounds each. The question directly raised by the complaint is whether a minimum of that number of crates is a reasonable requirement to impose upon the traffic under the special conditions that surround it. The contention on the part of the complainants is that the crates should not exceed 448 in number, or a minimum carload weight of 19,000 pounds.

The usual method of loading peaches is to place the crates end to end in seven rows of 16 crates each, with strips between the rows to prevent shifting in transit and to provide space for the free circulation of air. When so loaded the seven rows in the first tier on the floor comprise 112 crates; when piled in that fashion four tiers make 448 crates; and the remaining 87 crates on the fifth tier make the total of 535 crates. The crates on the fifth tier are placed as near the ice bunkers as possible, 44 being at one end and 43 at the other end of the car. The omission of the 87 crates on the top tier makes the difference between the minimum carload weight of 22,500 pounds required in the tariffs and the carload minimum of 19,000 pounds which the complainants claim should not be exceeded.

The contention on the part of the complainants is that peaches come to maturity and are also marketed while the weather is warm not only at the points of production but at the points of consumption; that because of the climatic conditions it is impossible thoroughly and equally to refrigerate more than four tiers of crates, and that when five tiers are placed in the car the refrigeration of the 87 crates on the top tier is inadequate, causing rot in those crates, which results in more or less injury also to the crates in the lower tiers. To avoid this many cars have been loaded by the shippers to the height of four tiers only, and on all such shipments, where the weight was less than 22,500 pounds, reparation is demanded. Four tiers occupy 55 per cent of the loading space in the car and reach a height of 4 feet, while five tiers, comprising 535 crates, take a little more than 60 per cent of the entire space and have a height of about 5 feet.

The crop is uncertain in quantity because of the liability to late frosts in the spring. In 1904 the peach shippers of Georgia forwarded 4,800 cars; in 1905 only 2,103 cars went to the market; in 1906 the shipments rose to a total of 3,400 cars; in 1907 the movement dropped off to 1,821 cars on account of a frost in March; in 1908 there was a heavy crop, which required 6,025 cars to move it to the markets; in 1909 there was a short crop and only 2,273 cars were

used; and in 1910 Georgia raised its bumper crop and sent out 6,300 carloads. The movement of the crop is never evenly distributed through the shipping season, which extends from early in June until late in July, but fluctuates from week to week, as is illustrated of record by the statement that during the week ending July 9, 1910, the growers shipped out from south Georgia 791 cars and during the following week from the same section forwarded 1,223 cars. To prepare for the movement experts are sent through the orchards three or four times before the fruit ripens, in order to look over the ground, confer with the shippers, and ascertain the probable number of cars that will be needed. But notwithstanding this exercise of foresight on the part of the carriers the crop is so unequal in amount and its ripening often so sudden, that at times during the past year the car supply was inadequate to move the shipments offered, and the shippers have accordingly presented their claims for damages. In other years many cars have been returned unused.

The cars used in this traffic are equipped with ventilators but they are seldom used, the practice being to forward the peaches under refrigeration, the cars being closed as tightly as possible. As a rule no provision is made by the Georgia growers for cooling the fruit before it is loaded into the car. The car itself, having its bunkers filled with ice at the icing station before being set on the shipper's track for loading, is cooled to some extent; but the fruit goes from the tree to the car within a few hours, it being apparently the desire of the grower to pick, pack, and load during the working hours of one day. As a consequence the fruit, picked while the atmospheric temperature ranges from 80 to 115 degrees, has itself a temperature, when delivered into the partially cooled car, of from 64 to 83 degrees. When the car is loaded and closed and delivered to the carrier for transportation the bunkers contain something less than 10,000 pounds of ice of a temperature approximating 32 degrees, while in the body of the car there are from 20,000 to 23,000 pounds of fruit, having, as the record shows, an average temperature of not less than 74 degrees. Air currents are immediately set up and pass slowly down through the bunkers; spreading out along the bottom of the car, they are supposed to rise up between and through the crates and back through the bunkers again, thus tending gradually to equalize the temperature of the ice and the peaches. But the car as a whole does not and can not cool rapidly; and it is said that at the top there is always a stratum of heated, moist air having a temperature in the neighborhood of 80 degrees when the car is first closed and seldom falling below 60 degrees until it has been on the road from 24 to 48 hours. It is doubtful whether this circulation of air by convection is even approximately equal throughout the car, and it is obvious that the temperature and

humidity which characterize the earlier hours of the journey to the markets do not tend to the preservation of the fruit at its best.

As soon as it is separated from the tree a peach ripens or decays very rapidly. When picked ripe or nearly ripe they quickly pass beyond the stage of perfection and begin to deteriorate unless promptly cooled to a point just short of freezing. A delay of a few hours may result in a condition that no subsequent cooling can repair. Cooling immediately after the fruit is picked serves not only to retard the accelerated ripening due to the separation from the tree but checks the development of rot and other disease. It is said that perfectly sound ripe peaches properly cooled after picking will keep well for several weeks in storage, the length of time depending largely upon the promptness and thoroughness of the cooling process. This is called precooling, but to be effective it must be done at the earliest possible moment after picking. It is done in a cold-storage plant before loading or can be done after loading by forcing very cold currents of air through the cars. In this way the ice in the car is not relied on to reduce the temperature of the peaches, but only to keep the car cool during the journey. Precooled to a temperature of 40 degrees or less, peaches under normal icing may be transported with safety to any market in the United States, even though loaded in five full tiers. Experiments conducted in Georgia by the agricultural department have demonstrated this fact. The record, however, indicates that but one Georgia planter practices precooling before offering his fruit for transportation, and he is not a complainant in this proceeding. The crop as a whole moves under ordinary icing. The complainants say that the peaches must be taken from the trees to the cars without previous refrigeration, and that there is no other way at present to handle the crop. We are advised, however, that another extensive grower is installing a precooling plant for use during this season.

Another difficulty with which the growers have to contend is a disease known as brown rot, which prior to the last season almost invariably infected the peach crop of that state. This trouble can now be avoided by the use of a treatment worked out by the department of agriculture. The spores of the disease are said to be transferable from a rejected to a sound peach by the fingers of the picker or the packer, so that even when the greatest care is exercised in picking, selecting, and packing the fruit it is practically impossible to eliminate all infected peaches. And under the warm and moist conditions existing within the car for the first day or two after its transportation has commenced, these spores multiply rapidly and quickly infect any fruit that is overripe or which has been injured to the extent of breaking its skin. The infec-

tion more frequently appears in the loaded car in the upper layer of crates, whether it be the fourth or the fifth layer, for it is there that the comparatively high temperature and greatest degree of moisture are found. Because of brown rot and the inadequacy of refrigeration, a number of growers make a practice of loading only four tiers or 448 crates, preferring to pay freight charges on five tiers, or 535 crates, in order to avoid the losses that they seem to think are due to the overloading. While it is said that many cars loaded to the minimum weight and even in excess of the minimum weight have arrived at destination in fairly good condition, such results, it would seem, are attributed largely to the character and condition of the fruit itself and to favorable weather at the time of loading. The general experience is that the fifth tier arrives in inferior condition. The planters therefore ask for a reduction in the minimum number of crates required in the tariffs of the defendants, not because it is impractical to load 535 crates in a 40-foot refrigerator car, but on the ground that it is impossible to refrigerate that number of uncooled crates with the facilities now offered by the carriers. As a matter of fact the refrigeration of a minimum load of 448 crates is not perfect. The fair inference to be drawn from the record is that without precooling entirely satisfactory refrigeration is only possible for the first and second tiers, and that from the third tier up the refrigeration becomes less and less adequate.

We think the record and, more particularly, the investigations made by the department of agriculture indicate that peaches from this section of the country ought to be thoroughly precooled before being offered for transportation. When this is done not only may they be moved with safety as heretofore stated, even when loaded practically to the capacity of the car, but they will stand cold storage with some degree of satisfaction for several weeks after their arrival at destination. When loaded in a heated condition there is, as we have said, a tendency to accelerated ripening and decay, and if any of the peaches so loaded are infected with brown rot the disease rapidly spreads to other crates of sound peaches. If they have been bruised in packing or handling the deterioration is also very rapid. These conditions are inherent in the character of the commodity offered for transportation. It is true that the defendants in their tariffs undertake to supply refrigeration. But this can not be interpreted as an offer on their part to overcome physical conditions and characteristics that are natural to the traffic. Nor can it be interpreted as an assumption of the burden of preparing the fruit properly for shipment. Some responsibility rests upon the shippers to improve the conditions under which their traffic is offered for transportation. The experiments conducted show that this can be done to the great benefit of the shipper and the

carrier alike, and also to the benefit of the public. If shipped in condition to stand transportation well and to be put in cold storage afterwards, not only would the peaches reach the public in prime condition but the glutting of the markets and the abnormally low prices resulting therefrom would be avoided. Brown rot may now be overcome, as heretofore stated, by a treatment recommended by the department of agriculture, and that trouble in the shipment of peaches from Georgia will doubtless disappear as rapidly as the growers take the necessary precautions. Precooling would largely if not entirely stay the accelerated ripening and decay that quickly follow the separation of the fruit from the tree if not promptly cooled. This precaution prior to the loading, together with proper refrigeration in transit, would assure the most perfect transportation possible with the refrigeration devices now available to the carriers, and would enable the growers to put their fruit on the market in the best possible condition and to dispose of it at the best possible prices. It may be well here to say that throughout the entire record there is no suggestion of inadequate or improper icing on the part of the defendants. The cars are repeatedly iced on the road and the traffic moves in special trains upon a running schedule of over 20 miles an hour, including stops for re-icing. Unfortunately the planters of Georgia are not prepared at this time to precool their peach shipments. It is difficult to see, however, how the responsibility for the results flowing from the failure to take these precautions can be said to rest with the carriers.

The real situation that seems to be presented by the record is that the ice in the car is not able to reduce the temperature of the heated mass that is loaded into the car with sufficient rapidity to interrupt the natural processes of ripening and decay. The process is too slow when the ice in the car is relied on both to reduce the temperature of the peaches and to keep a low temperature throughout the car during the carriage. We are asked then to reduce the carload minimum for a 40-foot refrigerator car, not because it is impracticable to load 535 crates in such a car, but because it is often impossible, with the methods of refrigeration now available to the carriers, promptly and thoroughly to refrigerate that number of crates when not pre-cooled. The record shows that if the minimum carload weight is reduced to 19,000 pounds, which means 448 crates piled in four tiers, the refrigeration would still be imperfect in many cases and could not be otherwise than imperfect when the fruit is loaded from the tree directly into the car. It is clear that if we should endeavor by lowering the minimum weight to meet and overcome conditions that inhere in the peaches when loaded in the manner now customary in Georgia we should have to limit the load to three tiers, which would mean a carload minimum weight on a 40-foot car of about 15,000 or

16,000 pounds; and at the present rate this would mean unduly low car earnings.

Some comparisons are made of record between the minimum weights specified in the tariffs of carriers moving peaches from other parts of the country, but we do not find them helpful in this proceeding. The conditions surrounding the transportation of peaches from California, Texas, and the northern states differ very widely from the conditions prevailing in Georgia. From the northern peach-producing regions the traffic moves to the large markets at Boston, New York, Philadelphia, and Baltimore by a short haul and under ventilation only. Brown rot is practically unknown on the Pacific coast and each peach shipped from California is separately wrapped in tissue paper. California peaches are also picked green or "hard ripe." Moreover, there are some precooling plants in that state and when these are not available the growers take advantage of the difference of 15 to 20 degrees in the day and night temperatures, and allow their fruit to cool by exposure to the night air before it is loaded. It is said that this is more effective than the cooling resulting from a day or two in the car under refrigeration. Moreover, within the first few hours after the movement commences the trains must climb the western slope of the Sierra Mountains and, the ventilators having been opened, the peaches thus get the advantage of the lower temperature of those altitudes. None of these conditions exist in Georgia. The fruit is picked when ripe or nearly so; the peaches are not wrapped in paper, and much damage has resulted from brown rot. There are no lofty ranges of mountains to climb nor is advantage taken of such difference as exists between the day and night temperatures. The minimum carload weight on peaches shipped from California is 24,000 pounds. It is said that peaches move from Texas points under a minimum weight of 20,000 pounds, but the general conditions that surround the traffic are not sufficiently explained of record to enable us to draw any strong and clear inferences from that fact with respect to the reasonableness of the minimum weights under which the traffic moves from Georgia.

In several formal cases the Commission has had occasion to consider the rates and minimum carload weights under which peaches are shipped from Georgia to the northern markets. As long ago as June, 1904, the matter was examined in some detail, and it will be instructive to read in this connection the report of the Commission then announced in *Georgia Peach Growers' Asso. v. A. C. L. R. R. Co.*, 10 I. C. C. Rep., 255, 267, 268. It explains much of interest in connection with the growing of peaches in Georgia, and discusses at some length and in detail the extent and character of the expedited service of the carriers in moving the fruit to the markets. In June, 20 I. C. C. Rep.

1907, a very exhaustive rehearing of the whole subject was had in *Waxelbaum & Co. v. A. C. L. R. R. Co.*, 12 I. C. C. Rep., 178. In disposing of that case a very earnest effort was made to adjust the carload earnings on a basis that was fair to the carriers, to the shippers, and to the public. The minimum carload weight is a factor in the carload rate and in connection with the rate per 100 pounds determines the carload earnings. Any reduction in the minimum weight without an increase in the rate per 100 pounds would therefore reduce the carload earnings of the carrier and would be equivalent to a reduction in the rate itself. *Kansas City Hay Dealers Asso. v. M. P. Ry. Co.*, 14 I. C. C. Rep., 603. The charges and general regulations now controlling the movement from Georgia, and particularly the rates, carload minimum weights, and refrigeration charges, are in substantial accordance with our findings in *Waxelbaum & Co. v. A. C. L. R. R. Co.*, *supra*; and nothing appears of record here that has served to convince us that any change in the minimum carload weights is reasonably required of the carriers at the present time.

In accordance with these conclusions, an order will be entered dismissing the complaint.

20 I. C. C. Rep.

No. 2786.
COMMERCIAL CLUB OF OMAHA
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted October 28, 1910. Decided April 3, 1911.

1. The long continuance of a rate voluntarily established and not published under the compelling influence of competitive conditions is in itself evidence of no little weight of its reasonableness; but the long continuance of a rate largely loses its value as evidence in a case involving an advanced rate for the same service, when it is shown that the prior and lower rate was the result of the influence of a strong movement by water.
2. The record presents no grounds for a finding that a rate of 85 cents per 100 pounds on lima beans in carloads from California to points in the territory extending from Colorado to the Atlantic seaboard is an excessive rate when considered as a blanket rate, or any grounds for taking Omaha out of a blanket territory, with which it has long been associated in this and other traffic without protest from any quarter, by a finding that it is an excessive rate to that particular point. Should it appear, however, from judicial proceedings now pending that the power of the Commission to deal with rates applicable to so extensive a group is a limited one and not coextensive with the power of the carriers to establish group rates of such broad application, nothing said here must be understood as indicating that the Commission would be satisfied with an 85-cent rate to Omaha.
3. The order heretofore entered herein vacated and the complaint dismissed.

E. J. McVann for complainant.

N. H. Loomis, Edson Rich, P. F. Dunne, and F. C. Dillard for Southern Pacific Company and Union Pacific Railroad Company.

James C. Jeffery, H. J. Campbell, and B. M. Flippin for Missouri Pacific Railway Company.

E. N. Clark for Denver & Rio Grande Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Our report in this proceeding appears in 18 I. C. C. Rep., at p. 53. The matter comes before us again upon an order reopening the record for further hearing. A number of formal and informal complaints presenting the same question are also pending before us. The 20 I. C. C. Rep.

issue involved in all of them is as to the reasonableness of a rate of 85 cents per 100 pounds on lima beans in carloads moving from certain points in California to destinations in Texas and Colorado, and to Omaha and a few other points that need not here be specifically mentioned. This case involves the rate to Omaha, while the cases that follow it involve the reasonableness of the 85-cent rate to other points. The relevant facts as gathered from the record as it now stands may be stated as follows:

From January 18, 1900, until January 1, 1909, the defendants had maintained, with some variations in the carload minimum weights, a blanket rate of 75 cents per 100 pounds, applicable on shipments of lima beans from certain points in California to Colorado and Texas and to all points east in practically the whole of the United States except the so-called southeastern territory. On January 1, 1909, the rate was advanced to 85 cents per 100 pounds in carloads, the minimum weight of 40,000 pounds established on October 12, 1903, remaining unchanged. At the same time advances were made in the rates on a number of other commodities, such as peas; alfalfa meal; sugar; cereals and cereal products; drugs and medicines; fruits; fruits concentrated, dried, in sacks, in boxes, and preserved; nuts; petroleum; seed; mustard; soap; and tobacco; and also on a number of manufactured and other articles, such as agricultural implements, baking powder, beer, blankets, bottles, canned goods, leather, wire rope, woolen waste, beeswax, hides, and wool in the grease and scoured.

The shippers interested in the bean rate, learning of the proposed advance, arranged for a conference in regard to the matter between the representatives of the transportation bureau of the Merchants Exchange of San Francisco and representatives of the defendants. This meeting occurred a few days before the advanced rate went into effect. No complaint seems then to have been made on behalf of the shippers as to the reasonableness of the higher rate in and of itself. The point urged was that their shipments into Texas were meeting the competition of foreign beans, particularly from Austria-Hungary, and that the advanced 85-cent rate would substantially modify, if not entirely stop, the movement from California to that state. As a result of the conference, the initial lines, without fully investigating the matter for themselves, decided to recommend their connections to restore the 75-cent rate to Texas points. At the next meeting of the transcontinental freight bureau, held in Chicago a few days after the 85-cent rate had become effective, this recommendation was approved. Thereupon the northern lines, in order to preserve the parity of rates on beans that had always existed between Texas points, on the one hand, and Colorado points and Omaha, on the other, decided to restore the 75-cent rate to

those points also. The further explanation made of the course of the northern lines in the matter is that some of them that serve Texas points also pass through Colorado and other intermediate territory, and they did not feel that it was desirable to carry lower rates to Texas than to the intermediate points. Although the conclusion to restore the former rate to Texas and Colorado points and to Omaha, and the few other points involved, was reached in January, 1909, the carriers, because of the complicated and extended nature of the tariffs, were not able actually to make the 75-cent rate again effective until June 5, 1909. As a consequence the 85-cent rate remained in effect to those points for five months after the restoration of the 75-cent rate had been agreed upon. It is to be observed that to all other parts of the very broad blanket territory heretofore described the 85-cent rate has remained undisturbed from the time it was first published.

During the interval between January 1 and June 5, 1909, while the 85-cent rate was in effect to Omaha and points in Texas and Colorado, more or less extensive shipments of lima beans moved to those destinations from California; and the formal and informal complaints to which we have alluded were filed for the purpose of obtaining reparation on these shipments on the basis of the 75-cent rate.

As originally presented to us the record showed nothing beyond the existence for years of the 75-cent rate to Omaha, and its "voluntary restoration," as we said in the report, "after the higher rate had been experimented with for a few months only." The complaint took the form of a mere reparation case which seemed to offer no reasonable solution other than that arrived at, namely, that the defendants had themselves found that the 85-cent rate, so far as shipments to Omaha were concerned, was more than the traffic could bear, and therefore had restored the 75-cent rate with the intention of maintaining it as the maximum rate to that point for the future. As the case was argued, it left us under the impression, as we stated in the report, that the restoration of the prior 75-cent rate to Omaha and Texas points, while leaving the 85-cent rate to other points unchanged, was apparently intended by the carriers as a "withdrawal of those few points from the extensive grouping with which they had for many years been associated in connection with this traffic." Reparation was therefore ordered and the defendants were also required to maintain the 75-cent rate to Omaha for the usual period of two years.

The announcement of this conclusion was followed, as heretofore explained, by the presentation on the formal and informal docket of claims for reparation, amounting in the aggregate to a very substantial sum.

There had been no intimation in the record upon which our previous report was based, or any indication on the argument, of a purpose on the part of the defendants to re-establish the 85-cent rate to Texas and Colorado points and to Omaha. Apparently the witnesses who testified and the counsel that argued the case had not been advised by the defendants that steps had already been taken to bring those points again under the 85-cent rate then applicable to all other parts of the blanket territory. The result was that while our order awarding reparation on the basis of the restored 75-cent rate and requiring that rate to Omaha for the future was entered on March 7, 1910, a tariff had already been filed, as was later disclosed, under which the 85-cent rate to that point was again to become effective on March 22, 1910. Thereupon, the motion for rehearing in this complaint was filed, and allowed, and the additional testimony now before us was taken.

The explanation made by the defendants of this rather unusual and vacillating rate history is that, immediately after the 75-cent rate had been re-established to Omaha and other points in that general territory, protests were made by jobbers at St. Louis, New Orleans, Joplin, and other points against the continued exaction at those points of the 85-cent rate. No complaint seems to have been made by them as to the reasonableness of the latter rate in and of itself; all that was demanded was that the discrimination be removed so that the jobbers who were paying 85 cents per 100 pounds could compete on equal terms with those at Omaha and elsewhere who were enjoying the benefit of the 75-cent rate. These complaints became so numerous that the defendants instituted a thorough investigation of the matter, and especially with respect to the representations of the California shippers as to the importation of foreign beans through Galveston. It appeared at the conclusion of their inquiry, as we are informed, that but one ton of foreign beans had been brought into Galveston during the year ending June 30, 1907; that 129 tons had come in during the fiscal year of 1908; and 900 tons during the year 1909. It was also ascertained that during the year ending June 30, 1908, while the 75-cent rate was in effect the rail lines had moved 9,671 tons of California beans to Texas, and that 11,136 tons had been shipped to Texas by rail during 1909, although for a part of that time the 85-cent rate was in effect. With this information before them the carriers felt that they had made a mistake in acceding to the demands of the California bean shippers, and that there had been no good reason for taking Texas and Colorado points and Omaha and the other points out of the general group in which for many years they had been included with respect to this and other traffic. And therefore at their next meeting in November, 1909, they decided to bring all those points again under the 85-cent rate. This conclusion

was made effective, as stated, on March 22, 1910, just two weeks after our order in this case had been entered, and after the restored rate of 75 cents had been in effect for about 10 months.

Two questions arise on the facts as we have stated them: 1. Whether the complainants in these formal and informal cases are entitled to reparation on shipments made during the five months while the 85-cent rate was in effect, on the theory that it was an excessive rate in view of the fact that the prior rate was 75 cents and that this rate was subsequently restored and remained in effect until March 22, 1910, a period of about ten months as just stated. 2. Whether the 85-cent rate again made effective on that date and now in force is an unreasonable rate.

Lima beans have come to be regarded more or less as a staple article of food. Oranges, on the other hand, are possibly to be classed among the luxuries notwithstanding their very wide and common use among all classes. The rate on oranges is \$1.15 per 100 pounds in carloads to all points in substantially the same territory to which beans take the 85-cent rate. The value at the point of origin of a carload of lima beans of the minimum weight of 40,000 pounds varies according to fluctuations in the market from \$1,500 to \$2,000; and the carload earnings to any part of the blanket territory on the basis of the 85-cent rate are \$340. Oranges seem to load to an average weight of 27,648 pounds. Their fair average value per box at the shipping points in California year in and year out is about \$1.50; and on that basis the value of a carload containing 384 boxes would be about \$576. The earnings on a carload of oranges to any point in the blanket territory amount to approximately \$320. The record shows that beans move with little risk of damage and that they load heavily. Oranges do not load so heavily, but under the modern methods of pre-cooling and ventilating or icing in transit they seem to move with a minimum risk of damage. Considering the very much larger value of a carload of lima beans as compared with a carload of oranges, we find it difficult to reach the conclusion that a rate of 85 cents applicable to all points in so extensive a territory, is excessive when considered by itself or tested by the rate and carload earnings on oranges, or when compared with the rates and carload earnings on similar products of California, such as dried fruit and canned goods, when destined to points in the same territory. The defendants insist that the rate is in itself a low rate and that the 75-cent rate was unduly low. Both rates, they contend, were established as the result of the influence of water competition. It is shown that 1,145 tons of beans moved from California to the eastern seaboard by water in 1906, that in 1907 the movement amounted to 758 tons, while 653 tons were shipped in 1908 and 2,990 tons in 1909. The 75-cent rate, the defendants assert, was originally established to the Atlantic seaboard be-

cause of the substantial movement by water and was extended back through the blanket territory in keeping with the policy of the trans-continental carriers of furnishing the products of the Pacific coast with a widely extended market, thus enabling them to compete in the broadest possible territory with similar products produced at more adjacent points.

The record shows that beans have been moving from California to all points in the blanket territory in increasing volume, so that the 85-cent rate has not impaired the free movement of the traffic. But on the general ground that the earnings of the defendants were already yielding an ample return on the investment it is contended by the complainant that the increase in the rate was unnecessary. Beyond that suggestion and the long continuance of the prior rate of 75 cents, there was practically no endeavor of record, either in this case or in the cases that accompany it, to show that the present rate of 85 cents is excessive or unreasonable. If it be true, as seems to be fairly established, that the 75-cent rate to the eastern seaboard was the result of the influence of the movement of beans by water and was extended back practically across the continent in conformity with the policy on the part of the carriers of opening the widest possible markets to California products, the long continuance of that rate can have no very strong tendency, if any tendency at all, to show, when an increase in the rate is attacked, that the prior rate was already reasonably high. The long continuance of a rate voluntarily established and not published under the compelling influence of competitive conditions is in itself evidence of no little weight of its reasonableness; but the long continuance of a rate largely loses its value as evidence in a case involving an advanced rate for the same service, when it is shown that the prior and lower rate was the result of the influence of a strong movement by water.

As we understand the record now before us it presents no grounds upon which we may properly base a finding that a rate of 85 cents per 100 pounds on lima beans in carloads from California points to points in the extensive territory to which it is applicable is an excessive rate when considered as a blanket rate. Nor do we see any grounds upon this record for taking Omaha out of a blanket territory with which it has long been associated in this and other traffic without protest from any quarter, as would be the case if we found by a finding that the 85-cent rate applicable throughout the territory is an excessive rate to that particular point. In addition to the absence of a sufficient basis of record for such a holding, that course would tend to break up the group and require a readjustment of the whole rate structure on California products moving to the east; and this, as we view the matter, would not be to the real interest either of the producer, the consumer, or of the carriers themselves.

As an average rate applicable to Omaha and to all points east of Omaha, including the Atlantic seaboard, we do not consider the 85-cent rate to be an excessive rate. But should it appear as the result of proceedings now pending in the courts at the instance of these defendants in the so-called lemon case, *Arlington Heights Fruit Exchange v. So. Pac. Co.*, 19 I. C. C. Rep., 148, that our power to deal with rates applicable to so extensive a blanket territory is a limited one and not coextensive with the power of the carriers to establish such rates, and we are later called upon to determine what is a reasonable rate on this traffic from California points to Omaha, considered by itself and apart from the territory with which it has always been grouped, nothing here said must be understood as indicating that we would be satisfied with an 85-cent rate to that point.

The order heretofore entered herein must be vacated and the complaint dismissed. It will be so ordered.

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No. 2730.

LAWRENCE-WARDENBURG COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

No. 3011.

F. D. OGDEN

v.

SOUTHERN PACIFIC COMPANY ET AL.

No. 3012.

NEW ORLEANS BOARD OF TRADE, LIMITED,

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted November 9, 1910. Decided April 3, 1911.

Following the conclusions reached in *Commercial Club of Omaha v. So. Pac. Co.*, ante, p. 631, and for other reasons given in the report herein, complaints, seeking reparation for alleged unreasonable rates collected on shipments of lima beans from California points to New Orleans and to points in Texas, Oklahoma, Colorado, and New Mexico, are dismissed.

G. M. Stephen for Lawrence-Wardenburg Company.

Lester G. Burnett and *J. O. Bracken* for F. D. Ogden.

John A. Smith for New Orleans Board of Trade, Limited.

N. H. Loomis, P. F. Dunne, F. C. Dillard, Edson Rich, C. W. Durbrow, J. P. Blair, J. A. Munroe, and Guy V. Shoup for Southern Pacific Company and Union Pacific Railroad Company, and affiliated lines.

James C. Jeffery, H. J. Campbell, and B. M. Flippen for Missouri Pacific Railway Company.

J. L. Coleman, D. L. Meyers, and H. D. Pillsbury for Atchison, Topeka & Santa Fe Railway Company.

E. N. Clark for Denver & Rio Grande Railroad Company.

Baker, Botts, Parker & Garwood and *F. C. Dillard* for Houston & Texas Central Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The first of the above-entitled complaints was filed on July 28, 1909, and asks reparation in the amount of \$40 on account of the alleged unreasonableness of a rate of 85 cents collected on a carload of beans shipped on February 20, 1909, from Sacramento, in the state of California, to Trinidad, in the state of Colorado.

The second complaint, filed December 9, 1909, was brought by one F. D. Ogden, as assignee of a large number of consignees in Texas, Oklahoma, Colorado, and New Mexico, and asks reparation, in the amount of \$3,716.57, on about 90 carload shipments moving from California points under the same rate.

The last complaint, also filed on December 9, 1909, was brought by the New Orleans Board of Trade on behalf of certain of its members who are dealers in beans, and asks reparation in the amount of \$512.53. It is based largely upon the alleged discrimination existing against New Orleans for a period of 10 months, during which time the 75-cent rate was in effect to Texas, Colorado, and Missouri River points. At the hearing the president of the Wholesale Grocers' Association of New Orleans said:

We feel that we have been placed at a great disadvantage in this distributive territory during the 10 months in which the rates were discriminatory, and we think the Commission owes it to New Orleans, if unwilling to grant the 75-cent rate in the future, to give us the privilege of that rate during as many months as it was accorded to competitive territory. It makes that appeal on behalf of the wholesale grocers of New Orleans and the large bean shippers.

Following the conclusions reached in *Commercial Club of Omaha v. So. Pac. Co.*, ante, p. 631, the complaints relating to shipments to New Orleans and to Texas and Oklahoma must be dismissed. So far as the shipments to Colorado and New Mexico are concerned we do not understand that the complainants in those cases question the propriety of including that territory in the blanket rates applicable on this and other traffic from California; and we are not inclined at this time to raise that question on our own motion and on this record. Those complaints were filed after the 75-cent rate had been restored, and apparently only for the purpose of seeking reparation on shipments made while the 85-cents rate was temporarily in effect. They are really reparation cases and can not fairly be said, either on the pleadings or on the record, to question the reasonableness of the 85-cent rate that was again made effective and is now in force. So considered the complaints with respect to those shipments must also be dismissed. Should the appeal by these defendants from our order in *Arlington Heights Fruit Exchange v. So. Pac. Co.*, 19 I. C. C. Rep., 148, result in a ruling by the courts that we have no authority to establish a blanket rate in a territory so broad as this, it would seem to

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follow that the carriers themselves are without such authority and that we must so hold when complaint is made of rates of such extensive application. In that event we should be forced to a different conclusion with respect to the reasonableness of an 85-cent rate on beans to points in Colorado and New Mexico.

An order will be entered in conformity with these conclusions.

No. 2909.

ALPHA PORTLAND CEMENT COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted October 17, 1910. Decided May 1, 1911.

Upon the facts disclosed by the record; *Held*, That a joint rate of \$2.75 per ton was not lawfully applicable to complainant's shipments of cement from Martins Creek, Pa., to Elizabeth City, N. C.; but that upon the shipment of February 28, 1908, a combination of intermediate rates amounting to \$2.75 per ton was applicable, and as to shipment of March 6, 1908, the joint rate of \$3.25 per ton was unreasonable so far as it exceeded said combination. Reparation awarded.

Louis H. Porter and William C. Dodge for complainant.
Henry Wolf Biklé for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is engaged in the manufacture and shipment of cement from Martins Creek, Pa., and Alpha, N. J., and has its general office at Easton, Pa. It alleges, in petition filed October 19, 1909, that on February 28 and March 6, 1908, it made certain shipments of cement, weighing 228,000 pounds, from Martins Creek Pa., to Elizabeth City, N. C., over the lines of the defendant carriers, upon which freight charges were collected at the rate of \$3.25 per net ton; that the cement plant is reached by the tracks of both the Bangor & Portland and the Pennsylvania railroads; that on the commodities referred to the tariffs of each of the carriers posted at the shipping stations named a rate of \$2.75 per ton for the transportation in question. The rate charged is alleged to have been unjust and unreasonable, and reparation is asked.

Martins Creek, Pa., is on the Lehigh & New England Railroad and the Bangor & Portland Railroad. At this point the complainant

has two cement mills, which at time of shipment were reached directly by the tracks of the Bangor & Portland Railroad and Lehigh & New England Railroad. The Pennsylvania Railroad has, at a point across the Delaware River in New Jersey, a station named Martins Creek, N. J. Between these two points a bridge spans the Delaware River. By a spur track over this bridge the Pennsylvania Railroad also reaches the complainant's mills at Martins Creek, Pa., and for purpose of interchanging freight traffic makes connection with the carriers named.

For some years prior to the time the shipments moved, and until September 29, 1908, the Bangor & Portland Railroad published a rate of \$2.75 per net ton on cement in carloads from Martins Creek, Pa., to Elizabeth City, N. C. This rate was applicable to traffic delivered to the Bangor & Portland at complainant's mills at Martins Creek, Pa., and the route of movement via connecting lines was over the Pennsylvania Railroad and New York, Philadelphia & Norfolk Railroad to Norfolk, thence via the Norfolk & Southern Railroad to Elizabeth City. By formal concurrences the carriers last named were bound to participation in the rates named in the Bangor & Portland tariff.

Contemporaneously, and up to January 30, 1908, the Pennsylvania Railroad published and filed tariffs naming rate of \$2.75 from Martins Creek, N. J., to Elizabeth City. A new tariff filed with the Commission, effective on this latter date, advanced the rate to \$3.25 per ton. A supplement to this tariff, effective March 2, 1908, provided that the name of the shipping station, Martins Creek, N. J., as shown in original tariff, should read Martins Creek, Pa., but neither the tariff advancing the rate nor the supplement changing the name of the station, as it appears, was posted at the station at Martins Creek, Pa., until March 8, 1908, two days after the last of the shipments in question had moved.

The gravamen of the complaint is that by failure to post its later tariff at Martins Creek, Pa., the Pennsylvania Railroad misled the complainant to its damage; that had the Pennsylvania duly posted its schedule at the latter station, complainant would have been advised of the higher rates applicable on traffic delivered direct to the Pennsylvania, and would have delivered the shipments to the Bangor & Portland, which road, after performing only a switching service, would have turned the shipments over to the Pennsylvania for transportation over its line and connections to Elizabeth City; that by thus making the Bangor & Portland the initial carrier, complainant would have been entitled to the rate of \$2.75 published by this carrier, notwithstanding the route of the Pennsylvania and its connections, over which the rate was \$3.25 from Martins Creek, N. J., to Elizabeth City, was wholly included in the route as to which

the Bangor & Portland was the initial carrier and via which, as before stated, the rate from Martins Creek, Pa., was only \$2.75.

The two bills of lading covering the shipments in question were each issued at the New Jersey station and signed by the agent resident there. In the space provided for the rate is inserted "2.75," apparently in the handwriting of the party who made out the bill of lading. The waybills and the clerical work in connection with the handling and dispatching of these shipments were apparently all done at the New Jersey station. Our information is that the New Jersey station is in fact the executive office in which is performed all the clerical work and accounting incident to business originating at, or destined to, the Pennsylvania station; that the latter is a nonagency station and has no facilities for handling less-than-carload traffic; that the only facility for handling carload traffic is the individual siding extending to the mills of complainant, with whom arrangements must be made by any other shipper who may desire to have shipments delivered on, or forwarded from, the Pennsylvania side.

From an examination of the tariffs on file with the Commission, it does not appear that the Pennsylvania Railroad, prior to March 2, 1908, had ever published any rates from Martins Creek, Pa., to Elizabeth City, N. C., although, as a matter of fact, it did publish rates from Martins Creek, Pa., to other points. There was no switching or terminal tariff between the two stations applicable to the movement of shipments of cement. The taking of the cars of complainant from the Pennsylvania to the New Jersey side, or, in other words, the application from Martins Creek, Pa., of rates published and applicable only from Martins Creek, N. J., was without legal authority until on March 2, 1908, when by supplement referred to the application was made from the Pennsylvania station.

It appears, however, that since November 1, 1907, the Pennsylvania Railroad has maintained a rate of \$2 per ton from Martins Creek, Pa., to Norfolk, Va.; and from November 1, 1906, to June 30, 1910, the Norfolk & Southern published a rate of 75 cents per ton from Norfolk to Elizabeth City. Therefore, when the first shipment moved on February 28, 1908, inasmuch as defendants had no joint rate lawfully applicable from Martins Creek, Pa., to Elizabeth City, it was their duty to apply the lowest combination of intermediate rates, which was \$2.75; and it follows that the application of the \$3.25 rate amounted to an overcharge of 50 cents per ton. When the second shipment moved, on March 6, 1908, the rate of \$3.25 from Martins Creek, Pa., had been published and filed with the Commission, although not posted at the station. But the combination on Norfolk was still in effect, and as to this shipment we find that the rate of \$3.25 was unreasonable to the extent it exceeded the combina-

tion of intermediate rates, amounting to \$2.75. It follows that complainant is entitled to reparation in the sum of \$57, with interest from April 1, 1908.

Effective June 30, 1910, the rate from Norfolk to Elizabeth City was advanced to \$1 per ton, and the combination on Norfolk is now \$3 per ton. We find that the joint rate of \$3.25 per ton is unreasonable to the extent that it exceeds the combination of intermediate rates, and that for the future the joint through rate ought not to exceed the combination on Norfolk. An order will be entered in accordance with the foregoing conclusions.

No. 3172.

WESTERN MANTLE COMPANY

v.

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY
ET AL.

Submitted November 8, 1910. Decided May 1, 1911.

Transcontinental tariffs provided a less-than-carload rate of \$3 per 100 pounds on "dry goods, n. o. s.," and a like rate of \$2.20 on "netting, cotton, n. o. s." Less-than-carload shipments by complainant were of knitted fabrics in tubular form, made wholly of cotton, for use as foundation material in the manufacture of gas mantles, and were not of the character of goods commonly known to the trade as "cotton netting;" *Held*, That in the absence of a provision specifically covering the commodity, the defendants properly applied thereto the rate on "dry goods, n. o. s."

A. J. Parrington for complainant.

James B. Kerr for Spokane, Portland & Seattle Railway Company; Great Northern Railway Company; and Northern Pacific Railway Company.

A. C. Spencer for Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; and Chicago & North Western Railway Company.

F. V. Brown for Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of gas mantles at Portland, Oreg. The issue in this proceeding is whether a

rate of \$3 per 100 pounds collected by defendants for the transportation of 17 less-than-carload shipments of material for use in the manufacture of gas mantles, from Chicopee Falls and Springfield, Mass., to Portland, Oreg., during the years 1908 and 1909, was lawfully applicable under the tariffs then in force. Complainant alleges that the shipments were entitled to a rate of \$2.20 per 100 pounds, and that the rate applied was therefore unjust and unreasonable. Reparation is asked.

There is a dispute between the parties as to the proper name or designation of the commodity shipped. In the freight bills it is variously designated by the delivering carriers as "knit goods," "knit dry goods," "gas-mantle fabrics," "mantle gauze," and "dry goods." In the invoices rendered by the Knit Goods Specialty Company, of Chicopee Falls, Mass., from which the material was purchased by complainant, it is uniformly described as "mantle fabrics."

The evidence is to the effect that the shipments consisted of cotton knit fabrics, or knitting-factory products, which were used by complainant as foundation material in the manufacture of gas mantles, and were without commercial value for any other purpose; that it is made by circular knitting machines, is tubular in form, and is referred to in the trade generally as "knitting," though sometimes as "netting." It was shipped in mixed lots packed in boxes or cases, partly in rolls or bolts of 50 to 100 yards in length, and partly in parcels cut to lengths of 8 inches.

Transcontinental freight bureau tariffs I. C. C. No. 376 and No. 890, in effect when the shipments moved, each named a rate from Chicopee Falls and Springfield, Mass., to Portland, Oreg., on "netting, cotton, n. o. s., in boxes or bales," in less-than-carload lots, of \$2.20 per 100 pounds. The same tariffs named a rate on "dry goods, n. o. s., in bales or in cases," in less-than-carload lots, of \$3 per 100 pounds, and the latter rate was applied to these shipments.

The question to be determined is whether the shipments were properly classed as "dry goods, n. o. s.," or whether the rate on "netting, cotton, n. o. s.," should have been applied.

On behalf of defendants, the assistant superintendent of the transcontinental freight bureau inspection service testified that if the commodity had been shipped in yardage or full bolts there would be some doubt whether the rate on cotton netting, not otherwise specified, would apply; but, as it was in part cut to lengths, it thereby lost its identity as cotton netting, if it could be so termed in any event, and became a mantle foundation cut to pattern, which had been subjected to a further process of manufacture than cotton netting, and properly came within the tariff description "dry goods, n. o. s." Another witness, introduced as a dry-goods expert, testified that there is a dis-

inction in grade between knit goods and nettings; that the material in question is of the character of goods that would be bought and sold in the trade as knitted fabrics or cotton knit goods made on knitting machines, as distinguished from cotton nettings which are made on looms.

In our opinion the commodity shipped was not cotton netting, as that article is commonly known to the trade; and, as a matter of tariff interpretation, we are of opinion that the term "netting, cotton, n. o. s.," is not properly descriptive of the shipments. In the absence of a provision specifically covering the commodity it was properly classed by the carriers as "dry goods, n. o. s.," and the lawful rate was applied.

It was contended that the rate on "dry goods, n. o. s.," was not properly indexed in the tariffs and therefore could not be used. We are not favorably impressed with this argument, as the term "dry goods" was indexed and immediately under that item in the tariff appeared the item "dry goods, n. o. s." This index was sufficient to comply with the Commission's rule in that respect. The complaint will be dismissed.

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No. 3431.

S. SAMUELS & COMPANY

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL

Submitted November 15, 1910. Decided May 1, 1911.

In June, 1909, there was no rate or combination of rates under which a shipment of cotton linters could lawfully be moved from England, Ark., to Houston, Tex. Nevertheless the initial carrier forwarded a shipment of that commodity via a circuitous route, over one portion of which there was a rate applicable to cotton linters. Over the remainder of the route no such rate was in force, and the carriers assessed a rate applicable on compressed cotton; *Held*, That complainant is entitled to reparation from the initial carrier on basis of a just rate via a reasonably direct route.

H. Samuels for complainant.

Daniel Upthegrove for St. Louis Southwestern Railway Company.

Wilt E. Orgain and *T. G. Beard* for Texas & New Orleans Railroad Company, Louisiana Western Railroad Company, and Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a partnership engaged at Houston, Tex., in the purchase and sale of cotton. Its petition, filed July 27, 1910, alleges that unreasonable charges were collected by defendants for the transportation of a shipment of cotton linters from England, Ark., to Houston in June, 1909; prays that a reasonable through route and joint rate be established for the carriage of cotton linters between the points named; and asks that reparation be awarded. Prior to the hearing a through route and joint rate satisfactory to complainant had been established; and the only question to be determined is whether, under the peculiar circumstances disclosed by the record, reparation should be granted.

Complainant purchased 110 bales of cotton linters, of the aggregate weight of 69,498 pounds, which were delivered to the St. Louis Southwestern Railway Company at England, Ark., a local point on

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its line, for transportation to Houston, in May, 1909. The shipment was tendered with instructions to route via Tyler, Tex., and the International & Great Northern Railroad. Upon being informed that there was no rate on cotton linters via the route named, the shipper directed that the traffic be forwarded via Shreveport, La., and the Houston, East & West Texas Railway, and being informed that there was no rate via the latter route the shipper then requested the initial carrier to forward by "most direct way to Houston, so we are protected in through rates." Thereupon the St. Louis Southwestern forwarded the traffic over its own line to Stamps, Ark., Louisiana & Arkansas Railway to Alexandria, La., Morgan's Louisiana & Texas Railroad to New Orleans, La., and thence over the Southern Pacific lines to Houston. Freight charges were collected from complainant in the sum of \$458.67 at a combination rate of 66 cents per 100 pounds. The distance from England to Houston over the route taken is 881 miles, while via Tyler it is 525 miles.

When the shipment moved there was no rate of any description applicable to the transportation of linters from England to Houston via any route. This was due to the fact that no through commodity rate had been published; and, although a fourth class rating is provided for linters in Western Classification, the tariffs naming class rates were also governed by exceptions to the Western Classification, which provided that class rates should not apply on linters. Thus neither class nor commodity rates were available. The rate actually assessed was composed of a combination rate of 48 cents on linters, England to New Orleans, plus a rate of 18 cents on compressed cotton, New Orleans to Houston. It will be seen, therefore, that the initial carrier scrupulously refrained from forwarding complainant's shipment via a direct route for the reason that there was no rate in effect, and finally sent it over a much longer and more roundabout route over which there was likewise no published rate.

Effective October 17, 1909, the St. Louis Southwestern Railway established a joint rate of 46½ cents on linters, England and Brinkley, Ark., to Houston, which is applicable in connection with the International & Great Northern via Tyler, or the Houston & Shreveport or Houston, East & West Texas via Logansport, but does not apply over the circuitous route taken by this shipment. When the shipment moved there was a rate of 49 cents on cotton, England to Houston, and a rate of 45 cents from Brinkley on linters. Brinkley is a point about 86 miles northeast of England, reached by the St. Louis Southwestern Railway, Chicago, Rock Island & Pacific Railway, and St. Louis, Iron Mountain & Southern Railway, and as to this shipment England was intermediate to Brinkley and Houston. Cotton linters, which consists of the lint taken from the cottonseed at oil mills, and

which in this instance cost 1 cent per pound, is a less valuable commodity than cotton.

The testimony indicates that the initial carrier held the linters at England three or four weeks. During that time the carrier might have secured permission from the Commission to publish a rate from England to Houston on short notice; or, by holding the linters for a short additional period, it might have published the rate on full statutory notice. And while it was under no legal obligation to adopt the former method, it was certainly its duty to provide a rate via a reasonably direct route as soon as lawful publication thereof could be made. But assuming that the carrier was willing to take the responsibility of forwarding the shipment via a route over which no rate was published, as it did, we are of opinion that it ought to have sent it over a direct route. Having taken that course, and a reasonable rate having subsequently been established over the route of movement, the carriers would have been in position to apply for permission to make settlement upon basis of the rate so established. The situation is one in which the shipper was helpless. He had directed carriage of his goods by the direct and natural route. The failure to comply with his instructions was due to the fact that the initial carrier had not provided a rate over the direct route and did not make a reasonable effort to do so.

We do not find that a rate of 66 cents was unreasonable for a haul via New Orleans, but we are of opinion that the rate of 46½ cents subsequently established would have been a reasonable rate via either of the direct routes; and that the failure of the initial carrier to forward the shipment over a direct route resulted in damage to complainant in an amount measured by the difference between the rate which should have been established and the rate which he was forced to pay. Our conclusion therefore is that the St. Louis Southwestern Railway Company should be required to make reparation to complainant, as for a misrouting, in the sum of \$135.50, with interest from June 24, 1909. An order will be entered accordingly.

20 I. C. C. Rep.

No. 3528.

NATIONAL REFINING COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY.

Submitted April 7, 1911. Decided May 1, 1911.

Rate of 13½ cents on petroleum and its products from Flat Rock, Ill., to Findlay,
Ohio, not found to be unreasonable.

C. D. Chamberlain for complainant.

O. E. Butterfield for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in producing, refining, and selling oil. One of its refineries is at Findlay, Ohio. Its petition alleges that defendant's rate of 13½ cents per 100 pounds for the transportation of crude petroleum in carloads from Flat Rock, Ill., to Findlay is unreasonable, and asks for the establishment of a rate of 10 cents in lieu thereof.

Until about a year ago complainant drew its supply of crude petroleum for its Findlay refinery from near-by Ohio oil fields. The approaching exhaustion of this supply induced it to purchase and develop oil wells at Flat Rock and Lawrenceville, Ill., points on defendant's Cairo branch about 165 miles northeast of Cairo. As one of the reasons for seeking a reduction of the 13½-cent rate to Findlay, complainant asserts that in view of the exhaustion of the near-by oil fields and the consequent necessity of going farther afield for its supply of crude oil, it is unable to ship its crude material from Flat Rock to Findlay and sell the refined product in competition with other refineries. But this situation furnishes no ground for the reduction of a rate if it be reasonable. The exhaustion of the supply of raw material near at hand must sooner or later be experienced by every manufacturing enterprise of this nature, and no legal obligation rests upon the carrier to counteract a result of natural conditions by a reduction of its freight rates.

Complainant also contends that a rate lower than 13½ cents, which applies to petroleum and its products, should be established for the carriage of crude petroleum in accordance with the general rule that raw material should be carried at a lower rate than its finished product. This is a well-established theory of rate making and has been generally approved by the Commission; but there are exceptions to it, a well-known instance being that of the rates on wheat and flour, which commodities, because of commercial conditions, are ordinarily carried at the same rate. For many years in official classification territory petroleum and its products have been given the same rates. Although refined oil is more valuable than crude petroleum, there are a number of by-products of petroleum which are of small value, and we are not now prepared to say that, on the whole, the practice of charging the same rate on petroleum and its products is improper. This argument is used by complainant for the purpose of supporting its contention for a reduction in the single rate here involved; but the announcement of such a principle would be of far-reaching effect, and we do not feel justified in deciding so important a matter upon the small amount of evidence which is now before us. If determination of that question becomes necessary, the Commission ought to be informed of the probable effect upon the business of oil producers generally, and to have some knowledge of its result with respect to the revenues of the carriers. Moreover, so far as the present record is concerned, if we were to apply the general rule urged by complainant, we would be unable to say whether the rate upon the product should be increased or the rate upon the crude oil reduced.

Having considered the two general arguments on behalf of complainant, it remains to be determined whether the rate of 13½ cents is unreasonable. Complainant has introduced in evidence rates from the Lawrenceville field to various competing points, and as these points have been selected by complainant they may fairly be used as a basis of comparison. The following table shows a number of the rates to which attention is called by complainant:

From Lawrenceville, Ill., to—	Dis- tance.	Rate per 100 pounds.	Rate per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills</i>
Findlay, Ohio	357	13.5	7.56
Fayette, Ky	239	10.0	8.37
Alton, Ill.	169	6.4	7.60
Wood River, Ill	165	6.5	7.88
Whiting, Ind	210	9.0	7.57
Indianapolis, Ind	136	8.5	12.50
La Fayette, Ind	200	9.5	9.50
Fort Wayne, Ind	255	12.0	9.41
Columbus, Ohio	321	13.0	8.10

It will be observed that each of the rates above mentioned produces more revenue per ton per mile than the rate complained of in this pro-

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT
DURING THE TIME COVERED BY THIS VOLUME.

1215. **RELIANCE COAL COMPANY v. LEHIGH VALLEY RAILROAD COMPANY.** Rates on coal from Reliance Colliery, Pittston, Pa., to South Wilkes-Barre, Pa., when for port points beyond. *William L. Bowman* and *John McGahren* for complainant. *Wheaton, Darling & Woodward* by *Mr. Wheaton, Geo. W. Field, O'Brien, Boardman, Platt & Littleton* by *Frank H. Platt* for defendants. January 13, 1911. Dismissed on motion of complainant.

2487. **DELRAY SALT COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.** Rates on salt from Detroit, Mich., to New York, N. Y., and other eastern points. *Moore & Moore* for complainants. *O. E. Butterfield* and *Clyde Brown* for defendants. January 13, 1911. Dismissed on motion of complainant.

2495. **LOGAN COAL COMPANY v. PENNSYLVANIA RAILROAD COMPANY.** Demurrage rule on cars loaded with bituminous coal at South Amboy, N. J., Harsimus Cove, N. J., Greenwich Piers on Delaware River and Baltimore, Md. *David L. Krebs* for complainant. *George Stuart Patterson* for defendant. January 14, 1911. Dismissed; following Nos. 2463 and 3208.

2634. **RAILROAD COMMISSION OF OREGON v. OREGON RAILROAD & NAVIGATION COMPANY ET AL.**—Rates on wool from Oregon points to eastern points. *C. L. McNary* for complainant. *Arthur C. Spencer* and *James B. Kerr* for defendants. April 3, 1911. Consolidated with Docket No. 4074.

2790. **COPPER QUEEN CONSOLIDATED MINING COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.** Rates on coke from Connellsville, Pa., to El Paso, Tex. *George Latimer* for complainant. *Chas. N. Burch, F. C. Dillard, J. P. Blair, Hawkins & Franklin, Ed Baxter, R. Walton Moore, Baker, Botts, Parker & Garwood, Edw. Barton,* and *Wm. C. Coleman* for defendants. January 5, 1911. Dismissed; complainant satisfied.

2866. **D. D. SHINDLER v. CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.** Rates on fireplaces and grates from Chicago to San Francisco and Oakland, Cal. *J. O. Bracken* for complainant. *Robert Dunlap, T. J. Norton, James L. Coleman,* and *S. A. Lynde* for defendants. April 3, 1911. Dismissed on motion of complainant; complaint settled on basis of holding in No. 2676.

3052. JOHN GUND BREWING COMPANY *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY. Reweighing charge on washed coal screenings from Coal City, Ill., to La Crosse, Wis. *H. A. Walter* for complainant. *Hale Holden*, and *F. E. Learned* for defendants. February 13, 1911. Straight overcharge to be refunded; complaint dismissed.

3083. HARLOW LUMBER COMPANY *v.* DURHAM & SOUTHERN RAILWAY COMPANY ET AL. Rates on pine lumber from Dunn, N. C., to New Haven, Conn. *F. M. Harlow* for complainant. *Ed Baxter*, *R. Walton Moore*, *George Stuart Patterson*, and *E. G. Buckland* for defendants. January 13, 1911. Dismissed on motion of complainant; complaint satisfied.

3094. ROY F. HALL *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL. Rate on emigrant's outfit from Albuquerque, N. Mex., to Fort Dodge, Iowa. *Roy F. Hall* for complainant in person. *Robert Dunlap*, *T. J. Norton*, and *Winston, Payne, Strawn & Shaw* for defendants. March 24, 1911. Transferred to Special Reparation Docket for adjustment.

3118. MILBANK MILLING COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Rates on flour from Milbank, S. Dak., to St. Louis, Mo. *James Quirk* for complainant. *William Ellis* and *N. S. Brown* for defendants. March 31, 1911. Transferred to Special Reparation Docket for adjustment.

3127. PITCAIRN COAL COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY. Discrimination in distribution of cars for coal. *Frederick D. Allam* and *Wm. A. Glasgow* for complainant. *Wm. Ainsworth Parker* for defendant. February 24, 1911. Dismissed on motion of complainant.

3147. E. S. TALBOTT *v.* SOUTHERN PACIFIC COMPANY ET AL. Rates on sheep from McMinnville, Oreg., to Douglas, Wyo. Double-deck cars ordered, single-deck furnished. Reparation claimed. *E. S. Talbott* for complainant in person. *S. A. Lynde*, *F. C. Dillard*, *W. W. Cotton*, *W. A. Robbins*, *N. H. Loomis*, *E. E. Whitted*, *R. H. Widdicombe*, *J. M. Cates*, *P. L. Williams*, and *A. C. Spencer* for defendants. January 13, 1911. Dismissed. Barred by statute of limitations.

3239. WOODWARD, WIGHT & COMPANY ET AL. *v.* ILLINOIS CENTRAL RAILROAD COMPANY ET AL. Rates on various commodities to New Orleans, La., and Vicksburg, Miss. Reparation claimed. *Russell P. Fischer* for complainant. *John H. Clarke*, *Hale Holden*, *Wm. C. Coleman*, *S. A. Lynde*, *Wm. Ellis*, *A. P. Humburg*, *Edw. Barton*, *O. E. Butterfield*, *Clyde Brown*, *W. F. Dickinson*, *A. P. Burgwin*, *C. B. Fernald*, *Wm. Hodgdon*, *Alex L. Smith*, *C. D. Clark*, *Loesch*, *Scofield & Loesch*, *D. P. Connell*, and *Wallace T. Hughes* for defendants. April 3, 1911. Dismissed on motion of complainant. Straight overcharge to be refunded.

3259. OTTUMWA LIME & CEMENT COMPANY *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL. Rates on lime from Quincy, Ill., to Ottumwa, Iowa. *O. E. Fullmer* for complainant. *Hale Holden* and *W. F. Dickinson* for defendants. February 14, 1911. Dismissed. Complaint satisfied.

3270. THE MAHAFFEY COMPANY *v.* NORTHERN PACIFIC RAILWAY COMPANY ET AL. Rates on potatoes from North Branch, Minn., to Cotter, Ark. *Wallace T. Hughes*, *W. F. Dickinson*, *A. P. Humburg*, *James C. Jeffery*, and *C. C. P. Rausch* for defendants. January 14, 1911. Dismissed for want of prosecution.

3304. LOGAN COAL COMPANY *v.* PENNSYLVANIA RAILROAD COMPANY ET AL. Rates on coal from Conemaugh, Pa., to San Francisco. *G. M. Stephen* for complainant. *Wm. Hodgdon*, *Geo. Stuart Patterson*, *Robert Dunlap*, *T. J. Norton*, *N. S. Brown*, *Henry Wolf Bikle*, and *C. B. Buxton* for defendants. April 4, 1911. Dismissed for want of prosecution.

3311. W. MILLS DAVIS *v.* ERIE RAILROAD COMPANY. Refund on unused portion of mileage ticket. *W. Mills Davis* for complainant in person. November 26, 1910. Transferred to Special Reparation Docket for adjustment.

3318. EUSTIS MINING COMPANY *v.* MAINE CENTRAL RAILROAD COMPANY. Rates on copper sulphur ore from Eustis or Capelton, Canada, to Portland, Me. *W. E. C. Eustis* and *A. H. Eustis* for complainant. *Charles H. Blatchford* for defendant. January 14, 1911. Transferred to Special Reparation Docket for adjustment.

3368. GOEDDE & COMPANY *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL. Rates on lumber from Barnett, La., to East St. Louis, Ill. *Edmund Goedde* for complainant. *J. D. Riddell*, *C. D. Whitney*, *Baker*, *Botts*, *Parker & Garwood*, *F. C. Dillard*, *E. L. Sargent*, *S. W. & F. H. Moore*, *Fred H. Wood*, *F. R. Pierce*, *E. C. D. Marshall*, *J. B. Bannon*, *M. O. West*, *Roy F. Britton*, *Robert Dunlap*, *T. J. Norton*, *M. L. Clardy*, *James C. Jeffery*, *W. F. Dickinson*, and *F. L. Purcell* for defendants. January 13, 1911. Dismissed on motion of complainant. Complaint satisfied.

3375. THE MAHAFFEY COMPANY *v.* CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL. Rates on cabbage from Geneva Junction, Wis., to Pensacola, Fla., and Richmond, Ill., to Baton Rouge, La. *S. F. Andrews*, *Chas. N. Burch*, *S. A. Lynde*, *C. C. Wright*, and *A. P. Humburg* for defendants. January 14, 1911. Dismissed for want of prosecution.

3389. STANDARD GILSONITE & ASPHALTUM COMPANY *v.* UTAH RAILWAY COMPANY. Rates on gilsonite wares and merchandise between Mack and Dragon, Colo. *Henry R. Rhone* and *George Bullock* for complainant. *Vaile*, *McAllister & Vaile* for defendant. January 12, 1911. Discontinued on motion of complainant.

3395. BOSTON DAIRY COMPANY *v.* BOSTON & MAINE RAILROAD.

3396. D. WHITING & SONS *v.* BOSTON & MAINE RAILROAD ET AL.

3397. H. P. HOOD & SONS *v.* BOSTON & MAINE RAILROAD ET AL. (I. & S. No. 2.) Advance in rates on milk to Boston, Mass., etc. *Ropes, Gray & Gorham, A. R. Graustein, John F. Cusick, Wm. R. Sears,* and *G. K. Barlett* for complainants. *William H. Coolidge, C. A. Hight,* and *Frederick Foster* for defendants. *M. E. Pierce* for interveners. February 14, 1911. Dismissed on motion of complainants.

3443. ADVANCE ELEVATOR & WAREHOUSE COMPANY ET AL. *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY. Elevator allowances at St. Louis, Mo., and East St. Louis, Ill. *J. C. Lincoln* for complainants. *Fred H. Wood* for defendant. April 19, 1911. Transferred to Special Docket for adjustment.

3469. GRAHAM PAPER COMPANY *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL. Rates on paper from points in Wisconsin to St. Louis, Mo. *W. H. Bell* for complainant. January 13, 1911. Dismissed on motion of complainant. Straight overcharge to be refunded.

3481. BADER COAL COMPANY *v.* PENNSYLVANIA RAILROAD COMPANY ET AL. Through routes and joint rates on coal from points in Pennsylvania to New England points via Jersey City routes. *Berry & Bucknam* for complainant. *George Stuart Patterson* and *E. J. Rich* for defendant. January 13, 1911. Dismissed. Complaint satisfied.

3529. CONTINENTAL BRIDGE COMPANY *v.* ILLINOIS CENTRAL RAILROAD COMPANY ET AL. Rates on iron bridge material from Peotone, Ill., to points in Wisconsin. *G. M. Stephen* for complainant. *A. P. Humburg, S. A. Lynde,* and *C. C. Wright* for defendants. February 13, 1911. Dismissed on motion of complainant.

3541. WILLIAM K. NOBLE *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL. Rates on white ash heading from Nappanee, Ind., to Dyersville, Iowa. *R. B. Coapstick* for complainant. January 14, 1911. Dismissed on motion of complainant. Straight overcharge to be refunded.

3550. NORTHERN CASKET COMPANY *v.* CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL. Rates on iron grave vaults from Springfield, Ohio, to Fond du Lac, Wis. *G. M. Stephen* for complainant. *A. P. Humburg, Blewett Lee, D. P. Connell,* and *James Stillwell* for defendants. January 18, 1911. Transferred to Special Reparation Docket for adjustment.

3563. ARIZONA RAILWAY COMMISSION *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL. Rates on cereal products from Kingsley and St. John, Kans., milled in transit at Lamar, Colo., and

then forwarded to Clifton, Ariz. *George J. Stoneman* for complainant. *Robert Dunlap, T. J. Norton, James L. Coleman,* and *Hawkins & Franklin* for defendants. March 11, 1911. Transferred to Special Reparation Docket for adjustment.

3569. NEVADA-CALIFORNIA POWER COMPANY *v.* SOUTHERN PACIFIC COMPANY. Rates on dynamite from Hercules, Cal., to Laws, Cal. *J. O. Bracken* for complainant. December 28, 1910. Transferred to Special Reparation Docket for adjustment.

3572. SWIFT & COMPANY *v.* EVANSVILLE & TERRE HAUTE RAILROAD COMPANY. Double-deck cars ordered for shipments of hogs from Evansville, Ind., to East Cambridge, Mass.; single-deck cars furnished. Reparation claimed. *A. R. Fay* and *Maurice Weigle* for complainant. *O. E. Butterfield, Clyde Brown, F. H. Wood, C. B. Cardy,* and *John F. Finerty* for defendants. February 13, 1911. Dismissed on motion of complainant.

3577. GOLDING SON'S COMPANY *v.* PHILADELPHIA & READING RAILWAY COMPANY ET AL. Rates on English ball clay from Philadelphia, Pa., to Trenton, N. J. *J. M. Wright* for complainant. *Chas. Heebner, Henry Wolfe Bikle, William L. Kinter,* and *George Stuart Patterson* for defendants. February 13, 1911. Dismissed for want of prosecution.

3579. MERIDIAN FERTILIZER FACTORY *v.* VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY ET AL. Rates on commercial fertilizer from Shreveport, La., to points on C., R. I. & P. Ry. Co. in Arkansas. *S. R. Jennings* for complainant. *S. W. & F. H. Moore, R. Walton Moore, W. F. Dickinson, V. Schaffenberg, F. S. Buzbee,* and *J. D. Wilkinson* for defendants. February 13, 1911. Dismissed on motion of complainant; complaint satisfied.

3623. WILLIAM K. NOBLE *v.* WABASH RAILROAD COMPANY ET AL. Rates on coiled elm hoops from Wakarusa, Ind., to Hallwood, Va. *R. B. Coapstick* for complainant. *Henry Wolfe Bikle* and *Geo. Stuart Patterson* for defendants. January 13, 1911. Dismissed. Straight overcharge refunded.

3678. WOOD & SKILTON *v.* SEABOARD AIR LINE RAILWAY ET AL. Rates on lumber from Fitzgerald, Ga., to Cape Charles, Va. *Wilson & Barksdale* and *C. W. Owen* for complainant. January 20, 1911. Dismissed on motion of complainant; straight overcharge to be refunded.

3715. LINCOLN COMMERCIAL CLUB *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL. Rates from Lincoln, Nebr. (when from points east thereof). *Field, Ricketts & Ricketts* for complainant. *A. P. Humburg, Blewett Lee, M. L. Clardy,* and *James C. Jeffery* for defendants. January 10, 1911. Dismissed on motion of complainant.

3728. **POPLAR BLUFF LIGHT & POWER COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.** Rates on machinery from Washington, D. C., to Poplar Bluff, Mo. *G. M. Stephen* for complainant. *Edw. Barton, M. L. Clardy, and James C. Jeffery* for defendants. March 11, 1911. Dismissed on motion of complainant. Straight overcharge refunded.

3740. **VAIL COOPERAGE COMPANY v. PARAGOULD & MEMPHIS RAILROAD COMPANY ET AL.** Rates on staves from Paulding, Mo., to Sioux City, Iowa. *R. B. Coapstick* for complainant. *C. C. Wright and Edw. M. Hyzer* for C. & N. W. Ry. Co. February 13, 1911. Dismissed on motion of complainant; complaint satisfied.

3744. **FRANK BROTHERS COMPANY v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL.** Rates on mineral water from Manitou, Colo., to Reno, Nev. *E. N. Clark, J. G. McMurtry, F. C. Dillard, P. F. Dunne, and Geo. D. Squires* for defendants. April 4, 1911. Dismissed. Shipments complained of contained in another complaint.

3748. **ALBERT MILLER & COMPANY v. VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY ET AL.** Rates on potatoes from Girard, La., to Joplin, Mo. *A. A. O'Keefe* for complainant. *S. W. & F. H. Moore* for K. C. S. Ry. Co. March 11, 1911. Transferred to Special Reparation Docket for adjustment.

3837. **COLUMBUS IRON & STEEL COMPANY v. KANAWA & MICHIGAN RAILWAY COMPANY ET AL.** (I. & S. No. 26.) Advance in rates on coal from West Virginia to points in the territory getting its supply over the Great Lakes. *Vinson & Thompson* for complainant. *O. E. Butterfield and Clyde Brown* for T. & O. C. Ry. Co. February 27, 1911. Dismissed on motion of complainant.

3843. **ROACH & MUSSER SASH & DOOR COMPANY v. PITTSBURG CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.** Rates on window glass to Muscatine, Iowa, from points of origin in various States. *C. M. Gould* for complainant. *James Stillwell, W. F. Dickinson, and Wallace T. Hughes* for defendants. April 10, 1911. Dismissed on motion of complainant.

3939. **NATIONAL WOOL GROWERS ASSOCIATION v. OREGON SHORT LINE RAILROAD COMPANY ET AL.** Rates on wool from intermountain territory to Chicago, Ill., and points east thereof. *Geo. J. Stoneman and Johnson & Haddock* for complainant. *Wm. Hodgdon, A. P. Burgwin, C. C. Wright, Edw. M. Hyzer, E. D. Robbins, E. N. Clark, A. C. Campbell, E. E. Whitted, J. M. Cates, H. A. Taylor, T. W. Burgess, J. D. Armstrong, W. F. Dickinson, Hawkins & Franklin, O. E. Butterfield, Clyde Brown, R. B. Scott, F. C. Dillard, Geo. D. Squires, Henley C. Booth, C. W. Bunn, Chas. Donnelly, W. W. Cotton, W. A. Robbinss, Wm. Ellis, A. S. Holsted, N. H. Loomis, P. L. Williams, Robert Dunlap, T. J. Norton, Fred. H. Wood, Chas. H. Bates, C. W.*

Whittemore and *Edw. A. Haid* for defendants. April 3, 1911. Consolidated with Docket No. 4074.

3951. BIG FOUR COAL & COKE COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Rate on box-car loader from Ottumwa, Iowa, to Strong, Colo. *C. W. Durbin* for complainant. April 10, 1911. Dismissed on motion of complainant.

3959. BUFFALO STEEL COMPANY *v.* NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL. Rates on steel bars from North Tonawanda, N. Y., to Ashland, Ohio. *Kimball & Stowe* for complainant. April 18, 1911. Transferred to Special Docket for adjustment.

20 I. C. C. Rep.

REPARATION CASES DISPOSED OF BY THE COMMISSION IN FORMAL
BUT UNREPORTED DECISIONS DURING THE TIME COVERED BY
THIS VOLUME.

3336 (U. R. No. 272). WILLIAM K. NOBLE *v.* TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY ET AL. Unreasonable rate on coiled elm hoops from Marion, Ind., to Sheboygan, Wis. *R. B. Coapstick* for complainant. *J. W. Graham, Charles A. Schmettau, and H. W. Beyers* for defendants. December 5, 1910. Reparation awarded for \$30.96.

3185 (U. R. No. 273). MILWAUKEE CORRUGATING COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY. Unreasonable rate on iron pipe and troughs from Milwaukee, Wis., to Minneapolis, Minn. *J. E. Tracy* for complainant. *F. G. Wright* for defendant. December 5, 1910. Reparation awarded for \$136.53.

2540 (U. R. No. 274). HILL & WEBB *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL. Misrouting ear corn in the shuck shipped from Washington, Okla., and destined to Arcadia, La. *J. W. Webb* for complainants. *W. F. Dickinson, J. C. McCabe, and C. H. Webb* for defendants. December 5, 1910. Reparation awarded for \$75.26.

3101 (U. R. No. 275). ROBINSON CLAY PRODUCT COMPANY *v.* ERIE RAILROAD COMPANY ET AL. Unreasonable rate on stoneware from Akron, Ohio, to Walkerville, Ontario. *Alvin Hill* for complainant. No appearance for defendants. December 5, 1910. Reparation awarded for \$12.76.

3207 (U. R. No. 276). ROBINSON CLAY PRODUCT COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Unreasonable rate on fire clay from Rockland, Mich., to Crooksville, Ohio. *Alvin Hill* for complainant. No appearance for defendants. December 5, 1910. Reparation asked for by complainant refunded by the carriers prior to hearing. Complaint dismissed.

3356 (U. R. No. 277). GERMAIN COMPANY *v.* ATLANTA, BIRMINGHAM & ATLANTIC RAILROAD COMPANY ET AL. Unreasonable rate on lumber from Beach, Ga., to Greenville, Pa. *W. J. Herman* for complainant. *L. Z. Rosser and W. H. Quigg* for defendants. December 5, 1910. Reparation awarded for \$27.60.

3203 (U. R. No. 278). FULLER & JOHNSON MANUFACTURING COMPANY *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL. Unreasonable rate on bar or plate steel and iron chain from various

points in Ohio and Pennsylvania to Madison, Wis. *G. M. Stephen* for complainant. *S. A. Lynde, O. E. Butterfield*, and *F. H. Schmitt* for defendants. January 13, 1911. Reparation awarded for (total) \$15.88.

2490 (U. R. No. 279). *COPPER QUEEN CONSOLIDATED MINING COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.* Unreasonable charge on cast-iron pipe and fittings from Anniston, Ala., to Bisbee, Ariz. *P. M. Ripley* for complainant. *C. B. Compton, Geo. H. Crosby, C. A. King, S. H. Johnson, H. U. Mudge*, and *A. N. Brown* for defendants. January 13, 1911. Refund of overcharge to be made. No order issued.

2765 (U. R. No. 280). *SOUTH WEST SMELTING & REFINING COMPANY v. EL PASO & NORTHEASTERN RAILWAY COMPANY ET AL.* Alleged unreasonable charge on steel rails, fishplates, and bolts from St. Louis, Mo., to Orogrande, N. Mex. *George J. Greene* for complainant. *Hawkins & Franklin* for defendants. January 13, 1911. Complaint dismissed.

3298 (U. R. No. 281). *DREYFUS BROTHERS v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.* Unreasonable rate on candy from Montgomery, Ala., to New Iberia, La. No appearance for complainant. *Albert S. Brandeis, F. C. Dillard*, and *J. P. Blair* for defendants. January 13, 1911. Reparation awarded for \$4.20.

3307 (U. R. No. 282). *AMERICAN MILLING COMPANY v. MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY ET AL.* Alleged unreasonable rate on grain screenings from Duluth, Minn., to Owensboro, Ky. *Frank Liddy* for complainant. No appearance for defendants. January 13, 1911. Complaint dismissed.

3543 (U. R. No. 283). *ADVANCE THRESHER COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.* Alleged unreasonable rate on threshers from Battle Creek, Mich., to Portland, Oreg. *G. M. Stephen* for complainant. *F. C. Dillard, N. H. Loomis, P. L. Williams, W. W. Cotton, C. C. Wright, E. C. Lindley, W. F. Dickinson*, and *W. T. Hughes* for defendants. January 13, 1911. Complaint dismissed.

2347 (U. R. No. 284). *WINDSOR MILLING & ELEVATOR COMPANY v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.* Unreasonable rate on flour from Windsor, Colo., to Abbeville, La. *E. M. Ryan* for complainant. *E. E. Whitted, F. C. Dillard, N. H. Loomis*, and *W. M. Hodges* for defendants. January 13, 1911. Reparation awarded for \$120.96.

2539 (U. R. No. 285). *AMERICAN CEMENT PLASTER COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.* Unreasonable minimum weight on cement plaster from Watonga, Okla., to Kansas City, Kans. *H. G. Wilson* for complainant. *F. J. Shubert* for defendant. January 13, 1911. Reparation awarded for \$30.75.

3177 (U. R. No. 286). GAMBLE-ROBINSON COMMISSION COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Unreasonable rate on apples from Honeyville, Utah, to Aberdeen, S. Dak. *Lorenzo A. Knudsen* for complainant. *William Ellis, F. G. Wright, F. C. Dillard, W. W. Arthur, and L. T. Wilcox* for defendants. January 13, 1911. Reparation awarded for \$19.95.

3227 (U. R. No. 287). MASON CITY BRICK & TILE COMPANY v. CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY. Unreasonable rate on tile from Mason City, Iowa, to Lakefield, Mapleton, Huntley, Good Thunder, Rapidan, Easton, Wells, Alden, and Hayward, in the State of Minnesota. *S. W. Denison* for complainant. *William Ellis and F. G. Wright* for defendant. January 13, 1911. Reparation awarded for \$298.51.

3285 (U. R. No. 288). HARTFORD CANNING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Alleged unreasonable charges on machinery from Hoopeston, Ill., to Hartford, Wis. *George W. Wadsworth* for complainant. *F. G. Wright* for defendants. January 13, 1911. Complaint dismissed.

3426 (U. R. No. 289). BUFFALO OIL COMPANY v. CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY ET AL. Unlawful rate on lubricating oil from Fayette, Ky., to Superior, Wis. *J. A. Little* for complainant. *L. K. Luse* for defendants. January 13, 1911. Reparation awarded for \$9.10.

2868 (U. R. No. 290). GISHOLT MACHINE COMPANY v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL. Unreasonable rates on ironworking machinery from Detroit, Mich., to Madison, Wis. *H. J. Parke* for complainant. No appearance for defendants. January 13, 1911. Reparation awarded for \$11.20.

3099 (U. R. No. 291). E. CLEMONS HORST COMPANY v. SOUTHERN PACIFIC COMPANY ET AL. Unreasonable rate on hops from Perkins and Manlove, Cal., to New York and Troy, N. Y., Spangler, Pa., St. Louis, Mo., Milwaukee, Wis., and Cincinnati, Ohio. *Seth Mann* for complainant. *T. J. Norton, E. W. Camp, and Nathan P. Bundy* for defendants. January 13, 1911. Reparation awarded for \$98.97.

3191 (U. R. No. 292). AUGUST BACK v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Unreasonable rate on interior and exterior house trimmings from Sioux City, Iowa, to Lemmon, S. Dak. *Leonard Brisley* for complainant. *William Ellis and F. G. Wright* for defendants. January 13, 1911. Reparation awarded for \$41.57.

3308 (U. R. No. 293). HENRY J. ARNOLD v. MISSOURI PACIFIC RAILWAY COMPANY. Unreasonable rates on flour, meal, and feed from Sterling, Kans., to Arlington and Haswell, Colo. *J. C. Johnston* for complainant. No appearance for defendant. January 13, 1911. Reparation awarded for \$68.88.

3374 (U. R. No. 294). MILWAUKEE-WAUKESHA BREWING COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY. Unreasonable charges on empty beer packages from Chicago, Ill., to Waukesha, Wis. *George A. Schroeder* for complainant. *S. A. Lynde* for defendant. January 13, 1911. Reparation awarded for \$113.48.

3433 (U. R. No. 295). FITZSIMMONS-PALMER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL. Unreasonable rate on tomatoes from Gibson and Gadsden, Tenn., to Duluth, Minn. *A. J. Levy* for complainant. *N. W. Proctor* and *Walter D. Burr* for defendants. January 13, 1911. Reparation awarded for \$182.06.

3472 (U. R. No. 296). FRANKE GRAIN COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY. Discriminatory charge on corn from points in South Dakota to Milwaukee, Wis., and thence to Madison, Wis. *George A. Schroeder* for complainant. *F. G. Wright* for defendant. January 13, 1911. Reparation awarded for \$31.08.

3483 (U. R. No. 297). S. B. & B. W. FLESHER, INCORPORATED, v. LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY ET AL. Unreasonable rate on wool in the grease from Henderson, Ky., to Philadelphia, Pa. *G. M. Stephen* and *G. Cascaden* for complainant. *W. A. Colston* for defendants. January 13, 1911. Reparation awarded for \$6.88.

3209 (U. R. No. 298). J. ROSENBAUM GRAIN COMPANY v. CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY ET AL. Defendants' failure to pay elevator allowances for loading out grain prior to August 28, 1906. *Mayer, Meyer, Austrian & Platt* for complainant. *Fred H. Wood* for defendants. January 13, 1911. Reparation awarded for \$637.32.

3189 (U. R. No. 299). THISTLE MANUFACTURING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY. Unreasonable rate on washing-machine tubs from Davenport, Iowa, to Chicago, Ill. *Aug. Clausen* for complainant. *William Ellis* for defendant. February 13, 1911. Reparation awarded for \$257.70.

3194 (U. R. No. 300). WISCONSIN IRON & METAL COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY. Unreasonable rate on baled rags from Oshkosh, Wis., to Chicago, Ill. *Morris Block* for complainant. *William Ellis* for defendant. February 13, 1911. Reparation awarded for \$10.18.

3540 (U. R. No. 301). DAVIS SEWING MACHINE COMPANY v. PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL. Unreasonable rate on sewing machines from Dayton, Ohio, to New York, N. Y. *Clarence A. Toolen* for complainant. *James Stillwell* and *A. P. Burgwin* for defendants. February 13, 1911. Reparation awarded for \$31.75.

3267 (U. R. No. 302). RED WING SEWER PIPE COMPANY *v.* MISSOURI PACIFIC RAILWAY COMPANY ET AL. Unreasonable rate on sewer pipe from St. Louis, Mo., to Virginia, Minn. *G. M. Stephen* for complainant. *E. C. Lindley, William Ellis, Charles Donnelly, and Hale Holden* for defendants. February 13, 1911. Reparation awarded for (total) \$126.85.

2997 (U. R. No. 303). GREER-HOUGHTON LUMBER COMPANY *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL. Unreasonable rate on lumber from River Falls, Ala., to Waynetown, Ind. *Woollen, Woollen & Byers* for complainant. No appearance for defendants. February 13, 1911. Reparation awarded for \$18.44.

3353 (U. R. No. 304). C. O. BENTON *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL. Unreasonable rate on fence posts from Mammoth Springs, Ark., to Grainfield, Kans. *O'Neil & Hogueland* for complainant. *B. W. Scandrett* for defendants. February 13, 1911. Reparation awarded for (total) \$41.40.

3453 (U. R. No. 305). KULM MILL COMPANY *v.* MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY. Unreasonable rate on wild mustard seed from Kulm, N. Dak., to Minneapolis, Minn. *F. O. Gibbs* for complainant. No appearance for defendant. February 13, 1911. Reparation awarded for \$59.80.

3432 (U. R. No. 306). W. A. HALL & COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL. Unreasonable rate on canned fruit from Hayward, Cal., to Gardiner, Mont. *T. O. Gibbs* for complainant. *F. C. Dillard, L. T. Wilcox, C. W. Bunn, and J. S. Watson* for defendants. February 13, 1911. Reparation awarded for \$81.27.

3316 (U. R. No. 307). T. H. COCHRANE COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Unreasonable rate on potatoes from Wyocena, Wis., to Springfield, Ohio; from Fall River, Wis., to Louisville, Ky.; and from Doylestown, Wis., to Evansville, Ind. No appearance for complainant. *William Ellis, F. G. Wright, and A. P. Humburg* for defendants. February 13, 1911. Reparation awarded for (total) \$65.40.

3381 (U. R. No. 308). T. H. JOHNSON & COMPANY *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL. Unreasonable rate on rough yellow-pine lumber from Wetumpka, Ala., to Tullahoma, Tenn. *T. H. Johnson* for complainant. *N. W. Proctor* for defendants. February 13, 1911. Reparation awarded for \$16.40.

3271 (U. R. No. 309). CEDARBURG WOOLEN MILLS *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY. Unreasonable rates on wool from Chicago, Ill., to Cedarburg, Wis. *Alvin W. Wittenberg* for complainant. *F. G. Wright* for defendant. February 13, 1911. Reparation awarded for \$227.80.

3362 (U. R. No. 310). *EMERY, BIRD, THAYER DRY GOODS COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Alleged unreasonable rate on furniture from Kenosha, Wis., to Kansas City, Mo. *G. M. Stephen* for complainant. *S. A. Lynde* and *G. B. Winston* for defendants. February 13, 1911. Refund of overcharge to be made. No order issued.

3401 (U. R. No. 311). *CLOVER LEAF LUMBER COMPANY v. LOUISIANA RAILWAY & NAVIGATION COMPANY ET AL.* Alleged unreasonable rate on cypress shingles from Ninock, La., to Houston, Tex. *W. B. Arnold* for complainant. *E. H. Randolph* for defendants. February 13, 1911. Overcharge to be refunded. No order issued.

3272 (U. R. No. 312). *MANITOU MINERAL SPRINGS COMPANY v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL.* Unreasonable rate on mineral water from Manitou, Colo., to Reno, Nev. *E. P. Costigan* for complainant. *E. N. Clark, Richard Peete, F. C. Dillard, P. F. Dunne,* and *C. C. Dorsey* for defendants. February 13, 1911. Reparation awarded for \$190.

3739 (U. R. No. 313). *FRED L. HAMMOND v. BOSTON & MAINE RAILROAD ET AL.* Alleged unreasonable rate on brick from Epping, N. H., to West Point, N. Y. *James F. Egan* for complainant. *Edgar A. Rich, Charles H. Blatchford,* and *O. E. Butterfield* for defendants. February 13, 1911. Complaint dismissed.

3215 (U. R. No. 314). *G. ROSENBLATT v. OREGON RAILROAD & NAVIGATION COMPANY ET AL.* Unreasonable rate on fire brick from Ridgway, Pa., to Portland, Oreg. *A. J. Parrington* for complainant. *A. C. Spencer* for defendants. February 24, 1911. Reparation awarded for \$51.68.

3482 (U. R. No. 315). *P. D. LAMBROS v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Alleged unreasonable rate on paper candy boxes from Watertown, Wis., to Butte, Mont. *G. M. Stephen* for complainant. *F. G. Wright* and *H. H. Field* for defendants. February 24, 1911. Complaint dismissed.

3190 (U. R. No. 316). *F. RASSMAN v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Unreasonable rate on automobiles from New Castle, Ind., to Beaver Dam, Wis. *George W. Wadsworth* for complainant. *F. G. Wright* and *M. R. Maxwell* for defendants. February 24, 1911. Reparation awarded for \$5.

3450 (U. R. No. 317). *UTTERBACK BROTHERS COMPANY v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.* Alleged unreasonable charges on carriages from Watertown, N. Y., to Bangor, Me. *J. G. Utterback* for complainant. *D. P. Connell, E. C. Ryder, Percy R. Todd,* and *G. E. Wicks* for defendants. February 24, 1911. Complaint dismissed.

3598 (U. R. No. 318). *JOHN BOLLMAN COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.* Alleged unreasonable rate on

fibroid hand trucks from Elsmere Junction, Del., to San Francisco, Cal. *W. R. Perkins* for complainant. *F. H. Manter* for defendants. February 24, 1911. Overcharge to be refunded. No order issued.

3355 (U. R. No. 319). *STANDARD OIL COMPANY v. INDIANAPOLIS SOUTHERN RAILROAD COMPANY ET AL.* Unreasonable rate on crude oil from Stoy, Ill., to Noblesville, Yorktown, and Fortville, Ind. *C. W. Martyn* for complainant. *D. P. Connell* and *A. P. Humburg* for defendants. March 11, 1911. Reparation awarded for (total) \$115.52.

3587 (U. R. No. 320). *LUDOWICI-CELADON COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.* Alleged unreasonable rate on roofing tile from Coffeyville, Kans., to Omaha, Nebr. *O. M. Rogers* for complainant. *James C. Jeffery*, *C. C. P. Rausch*, *W. F. Dickinson*, and *Wallace T. Hughes* for defendants. March 11, 1911. Complaint dismissed.

3625 (U. R. No. 321). *BERLIN MACHINE WORKS v. BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY ET AL.* Unreasonable rate on secondhand woodworking machine from Loogootee, Ind., to Beloit, Wis. *O. M. Rogers* for complainant. *C. C. Wright* for defendant. March 11, 1911. Reparation awarded for \$20.44.

3597 (U. R. No. 322). *FEDERAL CIGAR COMPANY ET AL. v. ILLINOIS TERMINAL RAILROAD COMPANY ET AL.* Unreasonable rate on glass tobacco jars from Alton, Ill., to Richmond, Va., Jersey City, N. J., Trenton, N. J., Mansfield, Ohio, and Kingston, N. Y. *W. R. Perkins* for complainants. *Frederick S. Holbrook* and *Ernest S. Ballard* for defendants. March 11, 1911. Reparation awarded for (total) \$77.02.

3217 (U. R. No. 323). *CARSTENS PACKING COMPANY v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS ET AL.* Unreasonable rate on cottonseed oil from Dallas and Sherman, Tex., to Tacoma, Wash. *J. E. Belcher* and *J. W. McCune* for complainant. *George T. Reid* for defendants. March 11, 1911. Reparation awarded for (total) \$392.83.

3266 (U. R. No. 324). *FULLER & JOHNSON MANUFACTURING COMPANY v. CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.* Unreasonable rates on top buggies, open buggies, and spring wagons from Carthage, Ohio, to Madison, Wis. *G. M. Stephen* for complainant. *C. C. Wright* for defendants. March 11, 1911. Reparation awarded for \$7.22.

3297 (U. R. No. 325). *H. ROSENBLATT & SONS v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Unreasonable rate on cotton drills and cotton overalls from Wheeling, W. Va., to Beloit, Wis. *G. M. Stephen* for complainants. *F. G. Wright*, *C. C. Wright*, *Robert W. Richards*, and *D. P. Connell* for defendants. March 11, 1911. Reparation awarded for (total) \$15.32.

3632 (U. R. No. 326). **CHARLES T. ABELES & COMPANY v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.** Unreasonable rate on window glass from Hartford City, Ind., Arnold, Pa., and Chanute, Kans., to Little Rock, Ark. *G. M. Stephen* for complainant. *James C. Jeffery, C. C. P. Rausch, W. F. Dickinson, Wallace T. Hughes, Fred H. Wood, S. H. West, T. J. Norton, D. L. Meyers, James Stillwell, and D. P. Connell* for defendants. March 11, 1911. Reparation awarded for (total) \$248.84.

3634 (U. R. No. 327). **JOHN W. ZUBER v. CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.** Alleged misrouting of a shipment from Carrollton, Ga., to Lindsay, Ontario, Canada. *John W. Zuber* for complainant. *Charles T. Airey* for defendants. January 13, 1911. Complaint dismissed.

3448 (U. R. No. 328). **AMERICAN MILLING COMPANY v. PERE MARQUETTE RAILROAD COMPANY ET AL.** Unreasonable rate on beet final molasses from Charlevoix, Mich., to Peoria, Ill. *Frank T. Liddy* for complainant. No appearance for defendants. March 14, 1911. Reparation awarded for \$281.43.

3260 (U. R. No. 329). **MINNEAPOLIS BEDDING COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.** Unreasonable rate on cordwood from Maiden Rock, Wis., to Minneapolis, Minn. *George S. Grimes* and *James Manahan* for complainant. *Hale Holden* for defendant. April 4, 1911. Reparation awarded for \$111.55.

3463 (U. R. No. 330). **F. J. PONS v. SEABOARD AIR LINE RAILWAY.** Unreasonable rate on horses from Columbia, S. C., to Jacksonville, Fla. *L. E. Bigelow* for complainant. *R. Walton Moore* for defendant. April 4, 1911. Reparation awarded for \$5.95.

3479 (U. R. No. 331). **ALBERT MILLER & COMPANY v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.** Unreasonable rate on potatoes from Ida, La., to Chicago, Ill. *J. E. Robinson* for complainant. *C. C. P. Rausch, J. C. Jeffery, and H. J. Campbell* for defendants. April 4, 1911. Reparation awarded for \$116.24.

3485 (U. R. No. 332). **BARKER & COMPANY v. GULF & SHIP ISLAND RAILROAD COMPANY ET AL.** Misrouting lumber in transit from Laurel, Miss., to New Haven, Conn. *William S. Phippen* for complainant. No appearance for defendants. April 4, 1911. Reparation awarded for \$53.84.

3150 (U. R. No. 333). **HILL & WEBB v. IBERIA & VERMILION RAILROAD COMPANY ET AL.** Unreasonable rates on ear corn in the shuck from points in Louisiana to points in Texas. *J. W. Webb* for complainants. *F. C. Dillard, J. R. Christian, C. H. Webb, and J. L. West* for defendants. April 4, 1911. Reparation awarded for \$629.50.

3669 (U. R. No. 334). **BRUNSWICK-BALKE-COLLENDER COMPANY v. GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.** Unreason-

able charge on furniture stock from Chicago, Ill., to Toronto, Ontario. *James J. Mullen* for complainant. *H. C. Martin* for defendants. April 4, 1911. Reparation awarded for \$14.13.

3706 (U. R. No. 335). STANDARD OIL COMPANY *v.* BALTIMORE & OHIO CHICAGO TERMINAL RAILROAD COMPANY ET AL. Unreasonable rate on petroleum, refined oil, and gasoline from Whiting, Ind., to Waupaca, Wis. *Chauncey W. Martyn* for complainant. No appearance for defendants. April 4, 1911. Reparation awarded for \$129.77.

2812 (U. R. No. 336). HOPE COTTON OIL COMPANY *v.* TEXAS & PACIFIC RAILWAY COMPANY ET AL. Unreasonable rate on empty secondhand bags from New Orleans, La., to Hope, Ark. *G. M. Stephen* for complainant. *C. C. P. Rausch* and *James C. Jeffery* for defendants. April 4, 1911. Reparation awarded for \$44.58.

2898 (U. R. No. 337). McSHANE LUMBER COMPANY *v.* HOUSTON EAST & WEST TEXAS RAILWAY COMPANY ET AL. Alleged unreasonable rate on ties from Oden, La., to Denver, Colo. *C. S. Elgutter* for complainant. *Edson Rich*, *James E. Kelby*, *C. E. Spens*, and *J. J. Coleman* for defendants. April 4, 1911. Complaint dismissed.

3193 (U. R. No. 338). FOSTER LUMBER COMPANY *v.* SOUTHERN RAILWAY COMPANY. Unreasonable rates on cedar posts from Fackler, Ala., to Republican City and Campbell, Nebr., and Audubon, Iowa. *Bird & Pope* for complainant. No appearance for defendant. April 4, 1911. Reparation awarded for \$30.49.

3584 (U. R. No. 339). FORT SCOTT SORGHUM SYRUP COMPANY *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY. Unreasonable rate on molasses from Fort Scott, Kans., to Rogers, Ark. *Collett & Hutchinson* for complainant. *F. H. Wood*, *Edward A. Haid*, and *E. H. Seniff* for defendant. April 4, 1911. Reparation awarded for \$39.60.

3093 (U. R. No. 340). L. CHRISTIAN & COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Unreasonable rate on flour and mill feed from Shakopee, Minn., to Waverly, Va. *Charles E. French* for complainants. *William Ellis* and *F. G. Wright* for defendants. April 4, 1911. Reparation awarded for \$102.08.

3248 (U. R. No. 341). CHARLES T. ABELES & COMPANY *v.* MISSOURI PACIFIC RAILWAY COMPANY ET AL. Unreasonable rate on window glass from Caney, Kans., to Little Rock, Ark. *G. M. Stephen* for complainant. *James C. Jeffery* and *C. C. P. Rausch* for defendants. April 4, 1911. Reparation awarded for \$82.56.

3325 (U. R. No. 342). E. E. DOUVILLE *v.* GEORGIA, FLORIDA & ALABAMA RAILWAY COMPANY ET AL. Unreasonable charge on grapes from Douville, Ga., to New York, N. Y., and Milwaukee, Wis. *E. E. Douville* for complainant in person. No appearance for defendants. Reparation awarded for \$58.94.

3391 (U. R. No. 343). *E. P. Stacy & Sons v. Chicago, Burlington & Quincy Railroad Company et al.* Unreasonable rate on tomatoes from Humboldt, Trenton, Fruitland, and Jackson, Tenn., to Minneapolis, Minn. *Leonard Brisley* for complainant. *Hale Holden, W. K. Vandiver, F. G. Wright, William Ellis, George U. Seevers, and Lynn S. Helgersen* for defendants. April 4, 1911. Reparation awarded for \$147.14.

3412 (U. R. No. 344). *G. L. Graham & Company v. Chicago, Burlington & Quincy Railroad Company.* Unreasonable rate on timothy seed from McVeigh, Iowa, to St. Louis, Mo. *Thomas H. Martin* for complainant. *George H. Crosby and Robert B. Scott* for defendant. April 10, 1911. Reparation awarded for \$13.50.

3599 (U. R. No. 345). *Acme Cement Plaster Company v. Pere Marquette Railroad Company et al.* Alleged unreasonable rate on crushed gypsum rock from Grand Rapids, Mich., to Oglesby, Ill. *W. R. Fisse and M. N. Sale* for complainant. *John C. Bills and F. G. Wright* for defendants. April 10, 1911. Complaint dismissed.

3664 (U. R. No. 346). *Chicago & Riverdale Lumber Company v. Chicago & Erie Railroad Company et al.* Misrouting lumber in transit from Chicago, Ill., to Yatesboro, Pa. *Collitt & Hutchinson* for complainant. *W. M. Johnson* for defendants. April 10, 1911. Reparation awarded for \$15.33.

3725 (U. R. No. 347). *Dian Lumber Company v. Prescott & Northwestern Railroad Company et al.* Unreasonable rate on lumber from Dian, Ark., to Washington, Mo. *William F. Pfeffer* for complainant. *James C. Jeffery, H. J. Campbell, and B. M. Flippin* for defendants. April 10, 1911. Reparation awarded for \$18.85.

3009 (U. R. No. 348). *Chanute Refining Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al.* Unreasonable rate on petroleum oil from Chanute, Kans., to Omaha, Nebr. *L. L. Marcell, F. A. Parsons, and W. C. Platt* for complainants. *B. F. E. Marsh* for defendants. April 10, 1911. Reparation awarded for \$199.83.

3404 (U. R. No. 349). *J. G. Miller v. Trinity & Brazos Valley Railway Company et al.* Unreasonable rate on track bolts from Fort Worth, Tex., to Port Barre, La. *Jno. W. Shevlin* for complainant. *Wallace T. Hughes, W. F. Dickinson, N. H. Lassiter, F. H. Wood, Edward A. Haid, and C. S. Bather* for defendants. April 10, 1911. Reparation awarded for \$479.54.

2831 (U. R. No. 350). *Walter & Company v. Lake Shore & Michigan Southern Railway Company et al.* Unreasonable rate on brass bedsteads from Cleveland, Ohio, to San Francisco, Cal. *J. O. Bracken* for complainant. *O. E. Butterfield; Winston, Payne, Strawn & Shaw; William Ellis; Chester M. Dawes; S. A. Lynde;*

Hawkins & Franklin; Baker, Botts, Parker & Garwood; F. C. Dillard; E. B. Peirce; and C. W. Durbrow for defendants. May 1, 1911. Reparation awarded for (total) \$189.20.

3095 (U. R. No. 351). *EVANS MILLING COMPANY v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.* Unjustly discriminatory rates on grain from landings of the Illinois River Packet Company to points in the East. *E. D. Evans* for complainant. *James W. Barrett* for defendants. May 1, 1911. Reparation awarded for \$1,945.15.

3240 (U. R. No. 352). *PORT HURON ENGINE & THRESHER COMPANY v. GULF, COLORADO & SANTA FE RAILWAY COMPANY ET AL.* Alleged unreasonable rates on iron dump wagons, sawmill machinery, and portable engines from Port Huron, Mich., to Cordele, Ga., and from Center, Tex., to Port Huron, Mich. *G. M. Stephen* for complainant. *T. J. Norton, D. L. Meyers, H. C. Martin, and F. W. Gwathmey* for defendants. May 1, 1911. Complaint dismissed.

3509 (U. R. No. 353). *NORTHERN CALIFORNIA LUMBER COMPANY v. SOUTHERN PACIFIC COMPANY.* Unreasonable rate on green fir lumber from Eugene, Oreg., to Hilt, Cal. *J. O. Bracken* for complainant. *George D. Squires* for defendant. May 1, 1911. Reparation awarded for \$44.28.

3526 (U. R. No. 354). *RALSTON PURINA COMPANY v. MOBILE & OHIO RAILROAD COMPANY ET AL.* Alleged unreasonable rate on feed in sacks, in carloads, from St. Louis, Mo., to Fivay Junction, Fla. *W. A. Bruce* for complainant. *Frank W. Gwathmey* for defendants. May 1, 1911. Complaint dismissed.

3566 (U. R. No. 355). *CHARLES L. HAMILTON v. AMERICAN EXPRESS COMPANY ET AL.* Alleged unreasonable rate on one baby's folding crib from Chautauqua, N. Y., to Centreville, Pa. *H. A. Siebeneck* for complainant. *Charles F. Patterson* for defendants. May 1, 1911. Refund of overcharge to be made. No order issued.

3627 (U. R. No. 356). *FRED S. SWANSON v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.* Unreasonable rate on broom corn from Manitou, Okla., to Omaha, Nebr. *E. J. McVann* for complainant. *G. H. Crosby, R. B. Scott, and Fred H. Wood* for defendants. May 1, 1911. Reparation awarded for \$118.04.

3635 (U. R. No. 357). *C. J. CRABTREE v. OREGON RAILROAD & NAVIGATION COMPANY ET AL.* Unreasonable rate on onions from Walla Walla, Wash., to Salt Lake City, Utah. No appearance for complainant. *H. B. Thompson* for defendants. May 1, 1911. Reparation awarded for \$49.60.

3653 (U. R. No. 358). *SOUTHERN COTTON OIL COMPANY v. SEABOARD AIR LINE RAILWAY ET AL.* Unreasonable charges on crude cottonseed oil from Cordele and Vidalia, Ga., and Union Springs and Montgomery, Ala., to Savannah, Ga., there refined and reshipped to

Babbitt and Bayonne, N. J., and Philadelphia, Pa. May 1, 1911. Reparation awarded for (total) \$77.49.

3676 (U. R. No. 359). *MENEFEE BROTHERS v. ROOSEVELT & WESTERN RAILROAD COMPANY ET AL.* Alleged unreasonable charges on shingles from Lynchville, La., to Fort Worth, Tex., and re-consigned to Bomarton, Tex. *W. S. Nurenborg* for complainants. *James C. Jeffery, C. C. P. Rausch, C. Schonfelder, and Herbert J. Campbell* for defendants. May 1, 1911. Complaint dismissed.

3696 (U. R. No. 360). *GEORGE W. OVERLY v. ADAMS EXPRESS COMPANY.* Unreasonable rate on jacks, crated, from Bellflower, Mo., to McCune, Kans. *J. A. McLane* for complainant. *W. G. Honn* for defendant. May 1, 1911. Reparation awarded for \$70.50.

3066 (U. R. No. 361). *ROBERT PORTNER BREWING COMPANY ET AL v. SOUTHERN RAILWAY COMPANY.* Unreasonable rate on near beer and empty beer packages from Alexandria, Va., to points in North Carolina. *George H. Beuchert* for complainants. *Claudian B. Northrup, Frank W. Gwathmey, and Oscar L. Horn* for defendant. May 8, 1911. Reparation awarded for \$331.45.

3645 (U. R. No. 362). *GOODMAN MANUFACTURING COMPANY v. PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY ET AL.* Alleged unreasonable rate on iron car wheels from Wilmington, Del., to Chicago, Ill. *G. M. Stephen* for complainant. *Henry Wolf Biklé* for defendants. Complaint dismissed.

3650 (U. R. No. 363). *WESTERN STATES PORTLAND CEMENT COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.* Alleged unreasonable rate on Portland cement from Independence, Kans., to Black Eagle, Mont. *O. W. Pratt* and *Geo. J. Mersereau* for complainant. *James C. Jeffery, Herbert J. Campbell, George H. Crosby, Robert B. Scott, and J. D. Armstrong* for defendants. May 8, 1911. Complaint dismissed.

3122 (U. R. No. 364). *EDGAR F. MOON v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.* Alleged unreasonable rate on apples from Fairbury, Nebr., to El Reno, Okla. *F. N. Prout* for complainant. *Wallace T. Hughes* for defendant. May 1, 1911. Waiver of undercharge allowed.

3827 (U. R. No. 365). *DEGENTESH BROTHERS v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.* Unreasonable rate on brewers' refuse, wet, from Chicago, Ill., to Lake, Wis. *Geo. A. Schroeder* for complainants. *F. G. Wright* for defendants. May 1, 1911. Reparation awarded for \$21.95.

NOTE.—The amount of reparation awarded in the above cases aggregates \$9,457.27.

**REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE
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1609. DARLING & COMPANY ET AL. *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL. December 3, 1910. Reparation of \$1,181.63, with interest, to Buffalo Fertilizer Company, by Louisville & Nashville Railroad Company, on shipments of phosphate rock from Centerville and Mount Pleasant, Tenn., to various destinations on account of excessive rate.

1609. DARLING & COMPANY ET AL. *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL. December 3, 1910. Reparation of \$171.22, with interest, to E. Rauh & Sons Fertilizer Company, on shipments of phosphate rock from Centerville and Mount Pleasant, Tenn., to various destinations on account of excessive rate.

2285. AMERICAN CREOSOTE WORKS, LTD., *v.* ILLINOIS CENTRAL RAILROAD COMPANY ET AL. December 22, 1910. Reparation of \$6,899.96, with interest, to American Creosote Works, Ltd., on account of unreasonable rates and switching charges as well as transit privileges on pine crossties from and to various points to Southport, La.

1609. DARLING & COMPANY ET AL. *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL. January 13, 1911. Reparation of \$343.44, with interest, to Jarecki Chemical Company on shipments of phosphate rock from Centerville and Mount Pleasant, Tenn., to various destinations on account of excessive rate.

1987. LYNAH & READ ET AL. *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL. February 15, 1911. Reparation of \$12, with interest, to Lynah and Read, and cancellation of unpaid charges of \$36; \$12, with interest, to Buck Brothers, and cancellation of unpaid charges of \$1; \$6, with interest, to C. W. Hendley, for unreasonable demurrage charges on cars containing interstate shipments of coal for transshipment by water at Locust Point, Baltimore, Md., and at Curtis Bay, Md.

3312. DAVENPORT COMMERCIAL CLUB FOR T. W. MCCLELLAND COMPANY *v.* THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY ET AL. April 4, 1911. Reparation of \$752.84, with interest, to McClelland Company, on shipments of cypress lumber, from Minot and Rome, Miss., to Davenport, Iowa, on account of excessive rate.

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Complaint brought by commission merchants and others; reparation to be awarded.

National League of Commission Merchants of U. S. v. A. C. L. R. R. Co. 132 (135).

COMMODITIES.

Anthracite coal. Chicago, Ill., to Sturgis, S. Dak. 156.

Apples. Utah to North Dakota, 136.

Bananas. Charleston, S. C., to Augusta, Ga. 225.

Beans. California to Omaha, Nebr. 631.

Beans. California to New Orleans, La., and other points, 638.

Beans. Charleston district, S. C., to northern markets, 190.

Beer, bottled. St. Louis, Mo., to Cullman, Ala. 550.

Beer bottles, empty. Capitan, N. Mex., to El Paso, Tex. 237.

Blacksmith coal. West Virginia to Los Angeles, Cal. 66.

Bottled beer. St. Louis, Mo., to Cullman, Ala. 550.

Bottles, beer, empty. Capitan, N. Mex., to El Paso, Tex. 237.

Boxes, cheese. Richmond Center, Wis., to Dodgeville, Wis. 104.

Boxes, paper. Milwaukee, Wis., to Spokane, Wash. 403.

Brick. Augusta, Ga., to Calhoun Falls, S. C. 148.

Brick. Mound Valley, Kans., to Tecumseh, Nebr. 89.

Brick, paving. Danville, Ill., to Cedar Rapids, Iowa, 239.

Brick, sample. Columbus, Ohio, to Chicago, Ill. 582.

Bridge material, iron. Clinton, Iowa, to St. Marys, Iowa, 416.

Building paper. Chicago, Ill., to Pueblo, Colo. 79.

Cabbage. Charleston, S. C., to Buffalo, N. Y., and Pittsburg, Pa. 132.

Cabbage, Charleston district, S. C., to northern markets, 190.

Cartons, wood-pulp. Milwaukee, Wis., to Spokane, Wash. 403.

Casing, sausage. Milwaukee, Wis., to Memphis, Tenn. 64.

Cattle, El Paso, Tex., to Bakersfield, Cal. 129.

Cattle. Gwynn's Run, Baltimore, Md. 124.

Cattle. Klamath Falls, Oreg., via Portland, Oreg., to Tacoma, Wash. 165.

Cement. Iola, Kans., to Texas, 91.

Chairs. Malvern, Ark., to Milwaukee, Wis. 496.

Cement. Martins Creek, Pa., to Elizabeth City, N. C. 640.

Cement. Trans-Missouri territory, 588.

Cement, Portland. New Village, N. J., to Williamstown and Enosburg Falls, Vt. 95.

Cheese boxes. Richland Center, Wis., to Dodgeville, Wis. 104.

Chip-board. Milwaukee, Wis., to Spokane, Wash. 403.

Citrus fruits. California to eastern markets, 106.

Citrus fruits. California to Miles City, Mont. 421.

Class rates. Eastern points to Ashland, Wis. 3.

Class rates. Official classification territory, 243.

COMMODITIES—Continued.

- Class rates. St. Louis, Mo., to Texas common points. 463.
- Coal. Carbon Hill, Ala., to Herbert switch, Tex. 167.
- Coal. Chicago, Ill. Demurrage, 559.
- Coal. Chicago, Ill., to Sturgis, S. Dak. 156.
- Coal. Diamondville, Wyo., to Anaconda, Mont. 598.
- Coal. Territory east of Illinois and north of Ohio River, 426.
- Coal. West Virginia to Los Angeles, Cal. 66.
- Cocanut oleine. Official classification territory, 174.
- Commodity rates. Official classification territory, 243.
- Commodity rates. Northwestern states, 307.
- Commodity rates. St. Louis, Mo., to Texas common points, 463.
- Cooperage. Bell City, Mo., to Jacksonville, Fla. 62.
- Cooperage. Creston, Ohio, to Windsor Shades, Va. 72.
- Cooperage. Monette, Ark., to Jackson, Mich. 520.
- Cooperage. Mount Clemens, Mich., to Ripplemead, Va. 70.
- Cooperage. Newport, Mich., to New York City, 60.
- Corn. Elk Point, S. Dak., to Anaconda, Mont. 15.
- Corn. Erath, La., to Miles, Tex. 163.
- Corn shucks. Alexandria, La., to Brownwood, Tex. 410.
- Cotton fabrics. Memphis, Tenn., to Junction City, Ark. 235.
- Cotton-knit fabrics. Chicopee Falls and Springfield, Mass., to Portland, Oreg. 643.
- Cotton linters. England, Ark., to Houston, Tex. 646.
- Cotton piece goods. Mississippi River to Missouri River, from Atlantic seaboard, 141.
- Cotton waste. Augusta, Ga., to Tonopah, Nev. 423.
- Cottonseed. East St. Louis, Ill., from Oklahoma and other points, 37.
- Cottonseed. Missouri, Arkansas and Louisiana to Memphis, Tenn. 33.
- Cottonseed oil. Oklahoma to Texas, 43.
- Cracked corn. Elk Point, S. Dak., to Anaconda, Mont. 15.
- Cream in cans. Interstate points within a distance of 510 miles from St. Paul, Minn. 100.
- Cross-ties. Harvey, Va., to Muskegon, Mich. 86.
- Cucumbers. Charleston district, S. C., to northern markets, 190.
- Cypress lumber. Minot and Rome, Miss., to Davenport, Iowa, 19.
- Deadening felt. Chicago, Ill., to Pueblo, Colo. 79.
- Deciduous fruits. Utah to North Dakota, 136.
- Dry felt. Chicago, Ill., to Pueblo, Colo. 79.
- Dry goods. Chicopee Falls and Springfield, Mass., to Portland, Oreg. 643.
- Elm hoops. Bell City, Mo., to Jacksonville, Fla. 62.
- Elm hoops. Creston, Ohio, to Windsor Shades, Va. 72.
- Elm hoops. Mount Clemens, Mich., to Ripplemead, Va. 70.
- Elm hoops. Newport, Mich., to New York City, 60.
- Empty beer bottles. Capitan, N. Mex., to El Paso, Tex. 237.
- Felt, deadening, dry, and tarred. Chicago, Ill., to Pueblo, Colo. 79.
- Fence posts, rough. Devol, Okla., to Olney, Tex. 197.
- Fertilizer. Shreveport, La., to Hamburg, and Crossett, Ark. 554.
- Fertilizer material. Ottumwa, Iowa, to Ohio River, destined to southeast, 400.
- Fir lumber. Clatskanie Junction, Oreg., to DeBeque, Colo. 151.
- Fir lumber. Rainier, Oreg., to Hartley, Iowa, 10.
- Fruit, citrus. California to eastern markets, 106.
- Fruit, citrus. California to Miles City, Mont. 421.
- Fruits, deciduous. Utah to North Dakota, 136.

COMMODITIES—Continued.

- Furniture. Malvern, Ark., to Milwaukee, Wis. 496.
- Furniture. Rockford, Ill., to San Francisco, Cal. 68.
- Furniture, mixed. Evansville, Ind., to El Paso, Tex. 17.
- Gas-mantle fabric. Chicopee Falls and Springfield, Mass., to Portland, Oreg. 643.
- Glue stock. Boston, Mass., to Chicago, Ill., Philadelphia to Gowanda, N. Y. 77.
- Goat skins. Farmington, N. Mex., to Chicago, Ill. 93.
- Grain. Buffalo, N. Y., to eastern points, 504.
- Grapes. Paw Paw, Mich., to Green Bay, Wis. 543.
- Gum lumber. Brilliant, Ala., to Thebes, Ill. 98.
- Hardware. Cleveland, Ohio, to Memphis, Tenn. 64.
- Hickory rim strips. Fourteen Mile Switch, Tenn., to Miamisburg, Ohio, 603.
- Hoops, elm. Bell City, Mo., to Jacksonville, Fla. 62.
- Hoops, elm. Creston, Ohio, to Windsor Shades, Va. 72.
- Hoops, elm. Mount Clemens, Mich., to Ripplemead, Va. 70.
- Hoops, elm. Newport, Mich., to New York City, 60.
- Horses. El Paso, Tex., to Phoenix, Ariz., and other points, 571.
- House blocking. Burkburnett, Tex., to Devol, Okla. 197.
- Iron bridge material. Clinton, Iowa, to St. Marys, Iowa. 416.
- Iron pipe. Youngstown, Ohio, to Liberal, Kans. 139.
- Knit dry goods. Chicopee Falls and Springfield, Mass., to Portland, Oreg. 643.
- Lath, spruce. Boston, Mass., to Toledo, Ohio, 586.
- Laundry soap. St. Louis, Mo., to Nogales, Ariz. 12.
- Leaf tobacco. Ephrata, Pa., to Richmond, Va. 81.
- Lima beans. California to Omaha, Nebr. 631.
- Linters, cotton. England, Ark., to Houston, Tex. 646.
- Live stock. El Paso, Tex., to Bakersfield, Cal. 129.
- Live stock. Gwynn's Run, Baltimore, Md. 124.
- Live stock. Klamath Falls, Oreg., via Portland, Oreg., to Tacoma, Wash. 165.
- Looking-glasses. Rockford, Ill., to San Francisco, Cal. 68.
- Lumber. Alabama to Ohio River, Kentucky and Tennessee, 450.
- Lumber. Boston, Mass., to Toledo, Ohio, 586.
- Lumber. Brilliant, Ala., to Thebes, Ill. 98.
- Lumber. Cairo, Ill., to Mississippi and other points, 606.
- Lumber. Clatskanie Junction, Oreg., to DeBeque, Colo. 151.
- Lumber. Eddy, Ala., to Columbus, Ohio, milled in transit at Meridian, Miss. 230.
- Lumber. Gleason, Ark., to Missouri, Kansas, Nebraska, Iowa, and Illinois, 612.
- Lumber. Minot and Rome, Miss., to Davenport, Iowa, 19.
- Lumber. Mississippi to Cypress, Ill. 228.
- Lumber. Points on V. S. & P. Ry. 575.
- Lumber. Rainier, Oreg., to Hartley, Iowa, 10.
- Lumber. West Edmeston, N. Y., to New Britain, Conn. 75.
- Mantle gauze. Chicopee Falls and Springfield, Mass., to Portland, Oreg. 643.
- Merchandise. Packing, 498.
- Millinery. Packing, 498.
- Mirrors. Rockford, Ill., to San Francisco, Cal. 68.
- Netting. Chicopee Falls and Springfield, Mass., to Portland, Oreg. 643.
- News-print paper. Combined Locks, Wis., to Dallas, Tex. 419.
- News printing paper. Los Angeles, Cal., to Grand Rapids, Wis. 169.
- Nucoa butter. Official classification territory, 174.
- Oil. Flat Rock, Ill., to Findlay, Ohio, 649.
- Oil, cottonseed. Oklahoma to Texas, 43.
- Oleine, cocoanut. Official classification territory, 174.

COMMODITIES—Continued.

- Oranges. California to eastern markets, 106.
- Paper hangings. Worcester, Mass., to St. Louis, Mo. 1.
- Paper, news-print. Combined Locks, Wis., to Dallas, Tex. 419.
- Paper, news printing. Los Angeles, Cal., to Grand Rapids, Wis. 169.
- Paper, wax. Bennington, Vt., to Portland, Oreg. 178.
- Paving brick. Danville, Ill., to Cedar Rapids, Iowa, 239.
- Peaches. Georgia to northern destinations, 623.
- Peanut roasters. Peoria, Ill., to Portland, Oreg., and Seattle, Wash. 546.
- Peas. Charleston district, S. C., to northern markets, 190.
- Petroleum. Flat Rock, Ill., to Findlay, Ohio, 649.
- Pipe, wrought-iron. Youngstown, Ohio, to Liberal, Kans. 139.
- Plows. Evansville, Ind., to Huntsville, Ala. 161.
- Portland cement. New Village, N. J., to Williamstown and Enosburg Falls, Vt. 95.
- Posts. Devol, Okla., to Olney, Tex. 197.
- Potatoes. Charleston, S. C., to Buffalo, N. Y., and Pittsburg, Pa. 132.
- Potatoes. Charleston district, S. C., to northern markets, 190.
- Printing paper. Los Angeles, Cal., to Grand Rapids, Wis. 169.
- Rice. Philadelphia, Pa. Storage charges, 527.
- Rim strips, hickory. Fourteen Mile Switch, Tenn., to Miamisburg, Ohio, 603.
- Roofing paper. Chicago, Ill., to Pueblo, Colo. 79.
- Salt. Retsof, N. Y., to Chicago, Ill. 530.
- Salt. Retsof, N. Y., to Detroit, Mich. 539.
- Sample brick. Columbus, Ohio, to Chicago, Ill. 582.
- Sash weights. Shreveport, La., to Marshall, Tex. 159.
- Sausage casing. Milwaukee, Wis., to Memphis, Tenn. 64.
- Scales, warehouse. Northville, Mich., to Memphis, Tenn. 64.
- Sheep. Dryden and Sanderson, Tex., to Soldani, Okla. 523.
- Sheep. Vaughn, N. Mex., to Kansas City, Mo., fed in transit at Pampa, Tex. 171.
- Sheepskins. Farmington, N. Mex., to Chicago, Ill. 93.
- Skins, goat and sheep. Farmington, N. Mex., to Chicago, Ill. 93.
- Snapped corn. Erath, La., to Miles, Tex. 163.
- Soap, laundry. St. Louis, Mo., to Nogales, Ariz. 12.
- Spruce lath and lumber. Boston, Mass., to Toledo, Ohio, 586.
- Staves. Monette, Ark., to Jackson, Mich. 520.
- Stearin, cocoanut. Official Classification Territory, 174.
- Steel tower material. Louisville, Ky., to West Port Arthur, Tex. 412 (413).
- Strawberries. Virginia and Maryland. Refrigeration, 600.
- Sugar. Lighterage to New Jersey terminals, 200.
- Sulphuric acid. Depue, Ill., to Hopatcong, N. J., and Emporium, Pa. 83.
- Switch ties. Harvey, Va., to Muskegon, Mich. 86.
- Tank material. Louisville, Ky., to West Virginia and Wisconsin, 412.
- Tankage. Ottumwa, Iowa, to Ohio River, destined to southeast, 400.
- Tarred felt. Chicago, Ill., to Pueblo, Colo. 79.
- Ties. Harvey, Va., to Muskegon, Mich. 86.
- Tobacco. Ephrata, Pa., to Richmond, Va. 81.
- Tower material, steel. Louisville, Ky., to West Port Arthur, Tex. 412 (413).
- Triplex cloth. Fort Wayne, Ind., to Beloit, Wis. 447.
- Vegetables. Charleston, S. C., to Buffalo, N. Y., and Pittsburg, Pa. 132.
- Vegetables. Charleston district, S. C., to northern markets, 190.
- Vehicle wheel material. Fourteen Mile Switch, Tenn., to Miamisburg, Ohio, 603.
- Warehouse scales. Northville, Mich., to Memphis, Tenn. 64.
- Wax paper. Bennington, Vt., to Portland, Oreg. 178.

COMMODITIES—Continued.

- Weights, sash. Shreveport, La., to Marshall, Tex. 159.
- Wheel material. Fourteen Mile Switch, Tenn., to Miamisburg, Ohio, 603.
- Wood-pulp cartons. Milwaukee, Wis., to Spokane, Wash. 403.
- Wooden tank material. Louisville, Ky., to West Virginia and Wisconsin, 412.
- Wrought-iron pipe. Youngstown, Ohio, to Liberal, Kans. 139.
- Yellow-pine lumber. Alabama to Ohio River, Kentucky and Tennessee, 450.
- Yellow-pine lumber. Eddy, Ala., to Columbus, Ohio, milled in transit at Meridian, Miss. 230.
- Yellow-pine lumber. Mississippi to Cypress, Ill. 228.

COMMODITY RATES.

- Commodity rates involved held to pay due share of value of service. In re Advances in Rates—Western Case, 307 (378).
- Commodity tariff is in nature of exception from classified list. In re Advances in Rates—Eastern Case, 243 (306).
- Naming of a commodity rate takes article out of class rates; but this rule does not prevent alternative use of class and commodity rates. Wheeler & Motter Mercantile Co. v. C. B. & Q. R. R. Co. 141 (145).
- No reason why rate should be relatively higher in case of article generally given commodity rate than in case of articles carried at class rates. Scheuing v. L. & N. R. R. Co. 550 (552).

COMMON CARRIER.

- While logging road might be a common carrier for public, it was held a plant-facility in transportation of complainant's logs. Kaul Lumber Co. v. C. of G. Ry. Co. 450 (455).

COMMON-POINT TERRITORY.

- Extension of common-point territory in Texas reduced ton per mile earnings. Railroad Commission of Tex. v. A. T. & S. F. Ry. Co. 463 (478).

COMMUTATION RATES.

- Commutation tickets provided for only 52 trips per month; not unreasonable. Boyle v. G. F. & O. D. R. R. Co. 232 (234).
- Commutation rate was conditioned upon certain number attending convention under certain conditions; conditions not complied with; not entitled to excursion rate. National Asso. of Letter Carriers v. A. T. & S. F. Ry. Co. 6.
- Conditioning refund upon return of lost ticket, unreasonable; reparation awarded. Moore v. N. Y. & L. B. R. R. Co. 557.
- Jurisdiction in connection with commutation tickets, not determined. Boyle v. G. F. & O. D. R. R. Co. 232 (234); Moore v. N. Y. & L. B. R. R. Co. 557 (558).
- Reduced rates restricted to school children, discriminatory. In re Restricted Rates, 426 (428).

COMPANY MATERIAL.

- Carrier has unquestioned right to haul its own property on its own rails. In re Restricted Rates, 426 (431).
- Coal rates restricted to certain consignors or when coal is for particular uses, condemned. In re Restricted Rates, 426.
- Local rate to junction point should be same for all shippers to that point, and through charge on shipments going beyond junction should be alike for all shippers to same destination. In re Restricted Rates, 426 (434).
- Railroad materials and supplies: Increase in cost. Railroad Commission of Tex. v. A. T. & S. F. Ry. Co. 463 (471).
- Railroad materials and supplies will not advance much in cost. In re Advances in Rates—Eastern Case, 243 (285).
- Railroad material and supplies, with exception of fuel and ties, cost less, on the average, than in any of past ten years. In re Advances in Rates—Western Case, 307 (368).

COMPARATIVE RATE. *See also* CLASSIFICATION.

Bean and orange rates compared. *Commercial Club of Omaha v. S. P. Co.* 631 (635).
 Cottonseed and cottonseed products compared. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 37 (42).

Difficult to see how Commission would permit a rate upon grain from Buffalo materially lower than rate upon flour manufactured from that grain. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (510).

Express rate on horses in special equipment in passenger trains compared with railroad passenger rate. *Arizona Railway Commission v. Wells Fargo & Co.* 571 (573).

Glue stock rate (fifth class) should not exceed rate on fleshings, tanner's or slaughterhouse offal (sixth class). *Barr Chemical Works v. P. & R. Ry. Co.* 77.

Manufactured products generally bear higher rates than raw material. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 37 (40); *National Refining Co. v. C. C. C. & St. L. Ry. Co.* 649 (650).

Mixture of corn, half cracked and half whole: rate unreasonable to extent that it exceeded rate on cracked or chopped corn, etc. *McCaull-Dinsmore Co. v. C. M. & St. P. Ry. Co.* 15.

No reason why rate should be relatively higher in case of article generally given commodity rate than in case of articles carried at class rates. *Scheuing v. L. & N. R. R. Co.* 550 (552).

Petroleum rate same as for petroleum products; not improper. *National Refining Co. v. C. C. C. & St. L. Ry. Co.* 649 (650).

Sample brick and other sample traffic compared. *Ohio Face Brick Mfrs. Asso. v. Adams Express Co.* 582 (585).

Sash weights compared with car wheels, axles, and castings. *Henderson Iron Works & Supply Co. v. T. & P. Ry. Co.* 159.

Sheep rate in excess of cattle rate: Commission prefers to pass upon question of reasonableness where it is properly in issue. *Big Canon Ranch Co. v. G. H. & S. A. Ry. Co.* 523 (526).

Spruce lath and lumber, Boston to Toledo, not unreasonable or discriminatory as compared with import rate on mahogany logs. *Furnace Run Saw Mill & Lumber Co. v. B. & M. R. R.* 586.

Switch tie rate should have not exceeded rate on lumber. *Fullerton Powell Hardwood Lumber Co. v. V. & S. W. Ry. Co.* 86 (88).

Tariff providing for more advantageous rates and mixed carload privileges for building and roofing paper than for building and roofing felt, other than wool felt, unreasonable. *Barrett Mfg. Co. v. C. M. & St. P. Ry. Co.* 79 (80).

Tie rate ordinarily should not exceed lumber rate. *Fullerton Powell Hardwood Lumber Co. v. V. & S. W. Ry. Co.* 86 (87).

Triplex cloth generally may properly take rate applied to other dry goods. *Rosenblatt & Sons v. C. & N. W. Ry. Co.* 447 (448).

Wheat and flour rates ordinarily the same. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 37 (41); *National Refining Co. v. C. C. C. & St. L. Ry. Co.* 649 (650).

COMPETING LINE.

Carrier with long route not obliged to meet rate of short-line competitor. *Georgia-Carolina Brick Co. v. S. Ry. Co.* 148 (149).

Commission ordinarily will not assist one carrier to secure traffic reasonably tributary to another road by requiring through routes and joint rates. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (492).

Since present relation of rates must be maintained, if any single route be required to maintain present scale between New York and Chicago, no advance by any line can be made. *In re Advances in Rates—Eastern Case*, 243 (272).

There is but little danger to be apprehended from construction of new lines. *In re Advances in Rates—Eastern Case*, 243 (264).

COMPETITION.

Competition among carriers has become less intense, or perhaps, more rational. In re Advances in Rates—Western Case, 307 (354).

Competition being reflected in lower rate to another point about same distance from common origin, rate held not unreasonable nor discriminatory. Blake & Son Hardware & Mfg. Co. v. B. & O. R. R. Co. 139 (140).

Competition and commercial conditions make horizontal readjustment inadvisable. Railroad Commission of Tex. v. A. T. & S. F. Ry. Co. 463 (482).

Fact that there was a lower rate from another point was of no importance, as competition from that point was inconsiderable. National League of Commission Merchants of U. S. v. A. C. L. R. R. Co. 132 (134).

Law itself practically forbids competition in rates. In re Advances in Rates—Eastern Case, 243 (264).

Railroad is a monopoly; its rates are not made under influence of competition. In re Advances in Rates—Eastern Case, 243 (280).

Reparation denied on basis of rate held discriminatory as against another shipper and in favor of complainant, complainant not being damaged, all its competitors from same field having paid same rate. International Salt Co. v. P. R. R. Co. 539.

There being no competition and no damage resulting from maintenance of lower rate to farther-distance point, intermediate point was not prejudiced to advantage of farther-distance point. Scheuing v. L. & N. R. R. Co. 550 (551).

Wheat rate from Chicago to Buffalo is subject to most active competition. Board of Trade of Chicago v. A. C. R. R. Co. 504 (506).

COMPETITIVE RATE.

All-rail rate on salt, New York to Chicago, is a compelled rate. International Salt Co. v. G. & W. R. R. Co. 530 (534).

All-rail rate on grain, Chicago to east, competes with lake-and-rail rate; division of line east of Buffalo can not be made standard by which to fix reasonable rate from Buffalo. Board of Trade of Chicago v. A. C. R. R. Co. 504 (508).

Proportional rate reduced to basis of competitive proportional rate; reparation on basis of reduced rate denied. Morrell & Co. v. C. B. & Q. R. R. Co. 400.

There is a strong presumption that rates largely result of competition are reasonable rates. In re Advances in Rates—Eastern Case, 243 (259).

COMPETITIVE TRAFFIC.

Commission ordinarily will not assist one carrier to secure traffic reasonably tributary to another road by requiring through routes and joint rates. Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co. 486 (492).

COMPLAINT.

Complaint not regarded as strictly as in a law action but rather as an appeal against illegal action. In re Advances in Rates—Western Case, 307 (315).

Complaint may not be dismissed without consent; lack of interest in traffic concerned does not "put shipper out of court." In re Advances in Rates—Western Case, 307 (315).

Complaint showing date and weight of shipment, with allegation of unreasonableness of rate charged, is sufficient. Riverside Mills v. G. R. R. 423 (424).

Inference drawn that intention was to attack rates in both directions, though complaint did not so specify. Beall v. W. A. & M. V. Ry. Co. 406 (409).

Reasonableness of particular rates not looked into upon complaint in this case. Railroad Commission of Tex. v. A. T. & S. F. Ry. Co. 463 (468).

Two shipments not mentioned in petition; included in case by agreement. Gamble-Robinson Fruit Co. v. N. P. Ry. Co. 421.

CONCERTED ACTION. See ANTITRUST ACT.

CONCURRENCE.

Initial carrier liable in damages to shipper where it named joint through rate in which connecting lines had not concurred, combination rate legally applicable being held unreasonable. *Texico Transfer Co. v. L. & N. R. R. Co.* 17 (18).

CONDITIONS AND LIMITATIONS.

Carrier may demand indemnity against losses by fire on premises of complainant as condition precedent to operation of private track to complainant's plant. *Imperial Wheel Co. v. St. L. I. M. & S. Ry. Co.* 56 (58).

Conditions not being complied with, not entitled to excursion rate. *National Asso. of Letter Carriers v. A. T. & S. F. Ry. Co.* 6.

Conditioning refund upon return of lost ticket, unreasonable. *Moore v. N. Y. & L. B. R. R. Co.* 557.

Tariff provided invoice value to be stated in bill of lading in order to secure lower rate dependent upon value; condition not complied with; reparation denied. *Dells Paper & Pulp Co. v. C. & N. W. Ry. Co.* 419.

What conditions may properly be enforced in connection with reduced rate tickets, not decided. *Moore v. N. Y. & L. B. R. R. Co.* 557 (558).

CONFERENCE RULING. See **ADMINISTRATIVE RULING.**

CONFISCATION.

Constitution guarantees carrier against confiscation of their property. In re *Advances in Rates—Western Case*, 307 (378).

There is a limit below which revenue of railways can not be reduced by public authority. In re *Advances in Rates—Eastern Case*, 243 (248).

CONSOLIDATED SHIPMENTS.

Rules respecting aggregation of packages incidentally modified in connection with establishment of minimum weights. *Millinery Jobbers Asso. v. American Express Co.* 498 (503).

CONSTRUCTION.

Burden of proof, under English act, is on carrier to justify "the increase of the rate;" under act of 1910, burden is on carrier to show that "the increased rate" is reasonable. In re *Advances in Rates—Eastern Case*, 243 (255); In re *Advances in Rates—Western Case*, 307 (312).

Old tariff issue was not strictly subject to rules of interpretation subsequently promulgated. *Henry v. E. Ry. Co.* 171 (172).

CONSUMER.

Commission must stand for entire public, having in mind those who do not appear before it. In re *Advances in Rates—Eastern Case*, 243 (250).

Duty of Commission is to see that rates are reasonable to all parties, manufacturers, carriers, and consumers. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 37 (42).

It is for interest of consumer and producer that cost of carriage should be reasonable. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (507).

CONTRACT.

Contracts can not justify violation of act. *Arizona Railway Commission v. Wells Fargo & Co.* 571 (574); *Baltimore Butchers Live Stock Co. v. P. B. & W. R. R. Co.* 124 (128); *Shoemaker v. C. & P. Tel. Co.* 614 (621).

CONVERSION.

Sale by carrier of alleged misrouted shipment. *Fullerton Powell Hardwood Lumber Co. v. V. & S. W. Ry. Co.* 86 (87).

COST OF CONSTRUCTION.

As measure of rate. In re *Advances in Rates—Eastern Case*, 243 (257).

COST OF OPERATION.

Influences tending to increase cost of operation. In re *Advances in Rates—Eastern Case*, 243 (276).

COST OF OPERATION—Continued.

Labor item makes up nearly one-half total cost of operation. In re *Advances in Rates—Eastern Case*, 243 (253).

COST OF REPRODUCTION.

Cost of reproduction as basis of valuation. In re *Advances in Rates—Western Case*, 307 (344).

Present cost of reproduction as an element in determining reasonableness of rate. In re *Advances in Rates—Eastern Case*, 243 (260).

COST OF SERVICE.

Cost of service and its relation to reasonableness of rates. In re *Advances in Rates—Western Case*, 307 (357).

Cost of movement per gross ton, as basis of rates on precooled shipments. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (121).

Cost of service is fairly to be considered in determining reasonableness of rate. *Ohio Face Brick Mfrs. Asso. v. Adams Express Co.* 582 (584).

Cost of transporting wheat by water is less than cost of transporting flour by water. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (518).

COST UNITS.

Cost units in railroad operation. In re *Advances in Rates—Eastern Case*, 243 (276).

Once comparative costs for various services are learned, a schedule of rates may possibly be made which will approach justice as between services. In re *Advances in Rates—Western Case*, 307 (362).

Some cost units have decreased. *Railroad Commission of Tex. v. A. T. & S. Ry. Co.* 463 (481).

CREDIT OF RAILROADS.

Financial strength of railroads considered in determining reasonableness of rate. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (485).

Railroads' credit not impaired. In re *Advances in Rates—Eastern Case*, 243 (251); In re *Advances in Rates—Western Case*, 307 (332).

CRIMINAL PROSECUTION.

Action will be taken to enforce compliance with law, if tariff defining storage privileges and charges is not filed. *Goldenberg v. Clyde S. S. Co.* 527 (529).

Where carriers willfully require an illegal amount to be paid or refuse to make restitution, Commission will regard it as its duty to enforce law by indictment. *National Refrigerator & Butcher Supply Co. v. I. C. R. R. Co.* 64 (65).

DAMAGES. See also REPARATION.

Carriers under joint rate are severally liable for damages from violation of law in which they participate. *Sondheimer Co. v. I. C. R. R. Co.* 606 (610).

Commission has jurisdiction to award rate damages resulting from misrouting. *Noble v. J. L. C. & E. R. R. Co.* 520 (522).

Commission has no jurisdiction to award damages for icing charges resulting from carrier's delay. *Platten Produce Co. v. K. L. S. & C. Ry. Co.* 543 (545).

Commission not justified in awarding damages except on a basis as certain and definite as essential to a final judgment or decree. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (49).

Damages awarded for demurrage and for expenses incurred in unloading and reloading part of carload as result of carrier's refusal to deliver except upon payment of excessive charges. *Schulz Co. v. C. M. & St. P. Ry. Co.* 403 (405).

Damages due to inability to compete in common markets can not become subject of reparation. *Sondheimer Co. v. I. C. R. R. Co.* 606 (608).

Damages denied on basis of rate held discriminatory as against another shipper and in favor of complainant, complainant not being damaged, all its competitors from same field having paid same rate. *International Salt Co. v. P. R. R. Co.* 539.

DAMAGES—Continued.

Damages denied for failure to establish another through route and joint rate over which shipment could have moved. *Edison Portland Cement Co. v. D. L. & W. R. R. Co.* 95 (97).

Damages denied for outlay in telegraph charges incurred in correspondence over excessive rate demanded at destination. *Schulz Co. v. C. M. & St. P. Ry. Co.* 403 (405).

Damages, resulting from lighterage allowance discrimination, to be awarded upon filing of detailed statement. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (217).

He who suffers damage by his own fault is not held to suffer damage. *National Asso. of Letter Carriers v. A. T. & S. F. Ry. Co.* 6 (9).

Initial carrier responsible to shipper in damages where it names a joint through rate in which connecting lines have not concurred, where rate legally in effect is unreasonable. *Texico Transfer Co. v. L. & N. R. R. Co.* 17 (18).

Larger car furnished than ordered. No tariff provision allowing charges upon basis of minimum fixed for car ordered. Damages awarded because of failure to make such tariff provision. *Noble v. B. & O. R. R. Co.* 72.

- Measure of damages was difference between discriminatory rate charged and rate found reasonable. *Sondheimer Co. v. I. C. R. R. Co.* 606 (611).

Measure of damages resulting from coal-car distribution discrimination reserved for further argument. *Bulah Coal Co. v. P. R. R. Co.* 52.

Rate, subsequently reduced, was not so unreasonable when charged as to entitle complainant to damages. *Riverside Mills v. G. R. R.* 423 (425).

Routing instructions can not be disregarded by carriers without incurring liability for resulting damages. *Noble v. J. L. C. & E. R. R. Co.* 520 (522).

Whether damages might be awarded against line over which shipment did not move upon theory that there should have been a rate under which it might move, undecided. *Edison Portland Cement Co. v. D. L. & W. R. R. Co.* 95 (97).

DELAY.

Commission has no jurisdiction to award damages for icing charges resulting from carrier's delay. *Platten Produce Co. v. K. L. S. & C. Ry. Co.* 543 (545).

Damages awarded for demurrage and for expense incurred in unloading and reloading part of carload as result of carrier's refusal to deliver except upon payment of excessive charges. *Schulz Co. v. C. M. & St. P. Ry. Co.* 403 (405).

Immaterial that longer route was selected as same rate applied by both routes. *Browne Grain Co. v. F. W. & R. G. Ry. Co.* 410.

No proof of being put on less favorable basis than competitors because of alleged late delivery of cars. *Bulah Coal Co. v. P. R. R. Co.* 52 (54).

Refrigerated or precooled car must be handled with diligence; carrier responsible if fruit injured by delay. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (117).

Time in transit is of prime and more than ordinary importance in shipment of fruit. *Stacy & Sons v. O. S. L. R. R. Co.* 136 (138).

DELIVERY.

Damages awarded for demurrage and for expense incurred in unloading and reloading part of carload as result of carrier's refusal to deliver except upon payment of excessive charges. *Schulz Co. v. C. M. & St. P. Ry. Co.* 403 (405).

Delivery has not been effected where a switching service is yet to be performed. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (569).

Delivery of live stock at complainant's sidetrack required. *Baltimore Butchers Live Stock Co. v. P. B. & W. R. R. Co.* 124.

No disadvantage shown to have resulted from alleged delay in delivering cars at mines. *Bulah Coal Co. v. P. R. R. Co.* 52 (54).

DELIVERY—Continued.

No misrouting to forward unrouted shipment via one route, though terminal delivery more satisfactory to consignee could have been secured without additional charges over another available route. *Bookwalter Wheel Co. v. T. C. R. R. Co.* 603.

Shipside delivery at New York included in ex-lake grain rate. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (516).

Whether carrier could be compelled to establish reciprocal switching arrangement, not decided; but where it has done so, under tariff authority, it must accept shipments for delivery to extent of its capacity. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (565).

DEMURRAGE. See also STORAGE.

Demurrage properly collected though flood caused delay in unloading. *Riverside Mills v. C. & W. C. Ry. Co.* 153.

Demurrage must be refunded where accruing as result of carrier's wrongful refusal to deliver until excessive charges paid. *Schulz Co. v. C. M. & St. P. Ry. Co.* 403 (405).

Demurrage not required to be paid unless tariff specifically so provides. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (569).

Demurrage may not be assessed except where shipper is in fault. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (569).

Whether tariff authority or not, it is unreasonable to assess demurrage against shipper because of delivering line's refusal to accept shipment. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (570).

DENSITY.

Density of traffic as element to be considered in determining reasonableness of rate. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (485).

It is reasonably certain that business will increase. In re *Advances in Rates—Eastern Case*, 243 (262).

Rate should decrease as density of traffic increases. In re *Advances in Rates—Eastern Case*, 243 (275).

DEPRECIATION.

Under present system of accounting railways are required to make a depreciation charge with respect to their equipment. In re *Advances in Rates—Eastern Case*, 243 (271).

DIFFERENTIAL.

Application for wider differential on ex-lake grain in favor of Baltimore dismissed, pending case presenting same subject. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (518).

DISADVANTAGE. See also DISCRIMINATION, PREFERENCE.

No disadvantage shown as result of alleged failure to place cars on siding or because of late delivery thereof. *Bulah Coal Co. v. P. R. R. Co.* 52 (54).

No undue disadvantage where competition compelled lower rate to neighboring point. *American Cigar Co. v. P. & R. Ry. Co.* 81 (82).

No violation of act to maintain joint rail-lake-and-rail rates higher than rail-and-lake rates to farther-distance point, where lake boats did not stop at complaining point. *City of Ashland v. N. Y. C. & H. R. R. R. Co.* 3.

Suggestion of disadvantage by comparison with another point not given serious consideration as competition to that point was inconsiderable. *National League of Commission Merchants of U. S. v. A. C. L. R. R. Co.* 132 (134).

DISCLOSING INFORMATION.

Unlawful for carrier to disclose information of shipper's business transactions to shipper's competitor. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (211).

DISCRIMINATION.

Application for same facilities for conducting auction business at carrier's terminals, as accorded exclusively to rival concern, denied. *Southwestern Produce Distributors v. W. R. R. Co.* 458.

Brick rates, Danville, Ill., to Cedar Rapids, Iowa, not found discriminatory. *Danville Brick Co. v. C. & N. W. Ry. Co.* 239 (242).

Class rates, St. Louis to Texas common points, held unduly discriminatory. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (485).

Coal-car distribution rules held discriminatory. *Bulah Coal Co. v. P. R. R. Co.* 52.

Contracts can not justify unjust discrimination. *Baltimore Butchers Live Stock Co. v. P. B. & W. R. R. Co.* 124 (128); *Shoemaker v. C. & P. Tel. Co.* 614 (621).

Damages denied on basis of rate held discriminatory as against another shipper and in favor of complainant, complainant not being damaged, all competitors from same field having paid same rate. *International Salt Co. v. P. R. R. Co.* 539.

Discrimination did not exist because a lower rate was charged to another destination of substantially same distance from a common point of origin, competition influencing rate to that point. *Blake & Son Hardware & Mfg. Co. v. B. & O. R. R. Co.* 139 (140).

Discrimination resulted from payment of lighterage allowance to one shipper while refusing such allowance to another shipper performing same service; damages to be awarded. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200.

Discrimination, it seems, will not result in favor of large shipper from allowing shippers to precool their own shipments. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (121).

Discrimination would result from granting lower rate to large shipper providing facilities for prompt unloading than accorded smaller competitor unable to provide such facilities. *In re Restricted Rates*, 426 (435).

Discrimination would result from rule requiring higher rate upon shipments not properly marked. *C. H. Algert Co. v. D. & R. G. R. R. Co.* 93 (94).

Discrimination alleged as result of application of so-called table of graduated weights; point not decided. *Millinery Jobbers Asso. v. American Express Co.* 498 (503).

Discrimination would necessarily result from lease by interstate carrier of trackage rights over connecting line to a quarry for purpose of hauling with its own crew ballast for use on its line. *In re Restricted Rates*, 426 (428).

Discrimination can not well be avoided if competing electric line is not given same fuel rate as accorded steam railroad. *In re Restricted Rates*, 426 (431).

Discrimination alleged because of refusal to permit complainant to purchase some cars, in refusal to permit use of cars by complainant while permitting such use by other shippers, and in temporarily keeping out of service other cars of complainant pending dispute as to terms of contract. *Bulah Coal Co. v. P. R. R. Co.* 52 (55).

Discrimination resulted from granting transit privilege on lumber at Memphis and denying it at Cairo under existing rate adjustment; damages awarded. *Sondheimer Co. v. I. C. R. R. Co.* 606.

Discrimination resulted from refusal to deliver live-stock shipments to complainant's sidetrack. *Baltimore Butchers Live Stock Co. v. P. B. & W. R. R. Co.* 124.

Discrimination resulted from demanding higher charges from new than from old subscribers for same telephone service and facilities. *Shoemaker v. C. & P. Tel. Co.* 614.

Discrimination resulted from advancing rate at one point and maintaining lower rate at points just across river, with which former point had been grouped. *Davenport Commercial Club v. Y. & M. V. R. R. Co.* 19 (20).

DISCRIMINATION—Continued.

Discriminatory to condition refund upon return of lost ticket; reparation awarded. *Moore v. N. Y. & L. B. R. R. Co.* 557 (558.)

Domestic rates on spruce lath and lumber, Boston to Toledo, not found unduly discriminatory. *Furnace Run Saw Mill & Lumber Co. v. B. & M. R. R.* 586.

Memphis, Tenn., unduly discriminated against by maintaining rates on cottonseed from Missouri, Arkansas and Louisiana that are lower to East St. Louis, a farther-distance point. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.* 33.

No discrimination found against cottonseed in favor of cottonseed products. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 37.

No unjust discrimination resulted from maintenance of lower commodity rate from neighboring point, because of competition. *American Cigar Co. v. P. & R. Ry. Co.* 81 (82).

No undue discrimination in application of fifth class rate to wooden tank material. *W. E. Caldwell Co. v. C. I. & L. Ry. Co.* 412 (415).

Nucoline is entitled to be classified with lard and lard compounds, and any discrimination in rates applied to these commodities is undue. *Nucoa Butter Co. v. E. R. R. Co.* 174 (176).

No violation of act to maintain joint rail-lake-and-rail rates higher than rail-and-lakes to farther-distance point where boats do not stop at complaining point. *City of Ashland v. N. Y. C. & H. R. R. R. Co.* 3.

Prohibition of discrimination as tending to increase carriers' revenue. *Shoemaker v. C. & P. Tel. Co.* 614 (618).

Railroad passenger fare across bridge not found unduly discriminatory. *Railroad Commissioners of Iowa v. I. C. R. R. Co.* 181.

Rate charged not unduly discriminatory, where rate via shorter route was reduced after shipment had moved. *Browne Grain Co. v. F. W. & R. G. Ry. Co.* 410 (411).

Reparation not denied merely because on other traffic complainant received rates to which he was fairly entitled. *Sondheimer Co. v. I. C. R. R. Co.* 606 (609).

Restricting rates to certain consignees or when commodity is put to a particular use constitutes unjust discrimination. *In re Restricted Rates*, 426 (437).

Suggestion of disadvantage by comparison with another point not given serious consideration as competition to that point was inconsiderable. *National League of Commission Merchants of U. S. v. A. C. L. R. R. Co.* 132 (134).

Tariff providing more advantageous rates and mixed carload privileges for building and roofing paper than for building felt, other than wool, was unreasonable. *Barrett Mfg. Co. v. C. M. & St. P. Ry. Co.* 79 (80).

There being no competition and no damage from maintenance of lower rate to farther-distance point, intermediate point was not prejudiced to advantage of farther-distance point. *Scheuing v. L. & N. R. R. Co.* 550 (551).

Through route and joint rate via another route required. *Stacy & Sons v. O. S. L. R. R. Co.* 136.

Zone system of commutation rates not found discriminatory. *Boyle v. G. F. & O. D. R. R. Co.* 232.

DISCRIMINATION—CLASSIFIED LIST.**ALLOWANCES:**

Federal Sugar Refining Co. v. B. & O. R. R. Co. 200.

ARTICLES:

Barrett Mfg. Co. v. C. M. & St. P. Ry. Co. 79 (80).

Nucoa Butter Co. v. E. R. R. Co. 174 (176).

FACILITIES:

Bulah Coal Co. v. P. R. R. Co. 52.

DISCRIMINATION—CLASSIFIED LIST—Continued.**LOCALITIES:**

- Anadarko Cotton Oil Co. *v.* A. T. & S. F. Ry. Co. 43.
 Davenport Commercial Club *v.* Y. & M. V. R. R. Co. 19.
 Memphis Freight Bureau *v.* St. L. S. W. Ry. Co. 33.
 Railroad Commission of Tex. *v.* A. T. & S. F. Ry. Co. 463 (485).
 Sondheimer *v.* I. C. R. R. Co. 606.

PERSONS:

- Baltimore Butchers Live Stock Co. *v.* P. B. & W. R. R. Co. 124.
 In re Restricted Rates, 426 (427).
 Moore *v.* N. Y. & L. B. R. R. Co. 557 (558).
 Shoemaker *v.* C. & P. Tel. Co. 614 (621).

DIVIDENDS.

- Dividends of western carriers. In re Advances in Rates—Western Case, 307 (324).
 Dividends of eastern carriers in 1910 higher than ever before. In re Advances in Rates—Eastern Case, 243 (252).
 Little importance attached to question of dividends apart from accurate understanding of real value of investment. Railroad Commission of Tex. *v.* A. T. & S. F. Ry. Co. 463 (483).

DIVISIONS.

- Arbitrary basis of divisions ignores differences in length of haul; mileage prorate basis of divisions divides earnings according to service performed. Stacy & Sons *v.* O. S. L. R. R. Co. 136 (139).
 Commission can always require filing of divisions, and a joint rate under agreed divisions definitely fixes lawful earnings of parties to that rate. In re Restricted Rates, 426 (432).
 Divisions of joint rate are subject of agreement between parties thereto, but each is bound by law to collect and retain neither more nor less nor different compensation than its established divisions. In re Restricted Rates, 426 (429).
 Divisions of joint rates are ordinarily not published and are subject to change by mutual agreement of carriers. In re Restricted Rates, 426 (429).
 Division of rate is not matter of public concern and ordinarily should not be made standard of reasonableness of rate or measure of discrimination. Board of Trade of Chicago *v.* A. C. L. R. R. Co. 504 (508).
 Factor of combination rate attacked as unreasonable. Carstens Packing Co. *v.* S. P. Co. 165.

DOMESTIC RATES.

- Fundamental dissimilarity of conditions under which domestic and import rates are constructed. Furnace Run Saw Mill & Lumber Co. *v.* B. & M. R. R. 586 (587).

EARNINGS. See REVENUE.**EATING HOUSE.**

- Persons and commodities transported for use in serving others than passengers and employees may not be carried except under regular tariff rates. In re Restricted Rates, 426 (428).

ECONOMY. See MANAGEMENT.**EFFICIENCY. See MANAGEMENT.****ELECTRIC LINE.**

- Electric line, operating between Washington, D. C., and Virginia points, held subject to act; passenger rate reduction required. Beall *v.* W. A. & M. V. Ry. Co. 406 (409).
 Interurban electric line's system of commutation fares, Washington, D. C., to Virginia points, not found unduly prejudicial or discriminatory. Boyle *v.* G. F. & O. D. R. R. Co. 232.

ELECTRIC LINE—Continued.

Switch connection and through routes and joint rates between electric line and steam roads, required. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486.

ELEVATION.

Elevation at Buffalo is included in ex-lake rate, Buffalo to Boston. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (505).

EMBARGO.

Embargo placed on cars of coal for delivery within Chicago switching district. Question of lawful right to maintain regulating embargo, not decided. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (561, 566).

Shipper not liable for demurrage where delivering carrier refused to accept shipment. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559.

ENGLISH LAW.

Under English law, burden is on carrier to justify "the increase of the rate;" under amended act of 1910, burden is on carrier to show that "the increased rate" is reasonable. *In re Advances in Rates—Eastern Case*, 243 (255); *In re Advances in Rates—Western Case*, 307 (312).

EQUALITY.

Duty of Government is to assure to all the right to use railroads on fair and equal terms. *Shoemaker v. C. & P. Tel. Co.* 614 (619).

If railroad is entitled to low rate because of its facilities, any shipper providing like facilities must be accorded same rate. *In re Restricted Rates*, 426 (435).

Law assures telephone patrons equality in rates and service. *Shoemaker v. C. & P. Tel. Co.* 614 (621).

Lower rate not permitted to large shipper providing unloading facilities than accorded to smaller shipper unable to provide such facilities. *In re Restricted Rates* 426 (435).

Payment of lighterage allowance to one shipper and refusal to pay such allowance to another shipper performing same service constitutes unlawful inequality. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (216).

Prohibition of inequalities among shippers is perhaps more fundamental and vital than any other feature of the act. *Federal Sugar Refining Co. v. B. O. R. R. Co.* 200 (214).

EQUIPMENT. See FACILITIES.**ERIE CANAL.**

Competitive influence of Erie Canal has to considerable extent disappeared; but it still produces profound effect upon grain rates, Chicago to Atlantic seaboard *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (507).

Erie-Canal-lake-and-rail rates considered. *City of Ashland v. N. Y. C. & H. R. R. R. Co.* 3 (4).

Erie Canal competition considered. *International Salt Co. v. G. & W. R. R. Co.* 530 (531).

ERROR. See MISQUOTATION.**ESTIMATED WEIGHT. See WEIGHT.****ESTOPPEL.**

Difficult to award damages to complainant carrier on account of rate in establishment and division of which it was a party. *Kaul Lumber Co. v. C. of G. Ry. Co.* 450 (454).

EVIDENCE.

"Best knowledge and belief" evidence, considered. *Clinton Bridge & Iron Works v. C. B. & Q. R. R. Co.* 416 (417).

EVIDENCE—Continued.

Entries in daily order book of carrier's agent as evidence of kind of equipment ordered by shipper. *Clinton Bridge & Iron Works v. C. B. & Q. R. R. Co.* 416 (417).

Evidence so vague and unsatisfactory that no definite finding could safely be predicated thereon. *Iola Portland Cement Co. v. M. K. & T. Ry. Co.* 91 (92).

In awards of reparation there must be that degree of certainty and satisfactory conviction in the mind and judgment of Commission as would be necessary under well-established principles of law as basis for judgment in a court. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (51).

Positive evidence of incorrectness of carrier's scaling is necessary before another weight can be substituted. *Browne Grain Co. v. G. C. & S. F. Ry. Co.* 163 (164); *Noble v. D. & T. S. L. R. R. Co.* 60 (61).

EXCLUSIVE PRIVILEGE. See PRIVILEGE.**EXCURSION RATE. See also COMMUTATION RATE.**

Round-trip ticket conditioned upon presentation of 1,000 certificates; 888 presented; not entitled to reduced rate. *National Asso. of Letter Carriers v. A. T. & S. F. Ry. Co.* 6.

EX-LAKE GRAIN.

Ex-lake grain rate, Buffalo to New York, not unreasonable. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (505).

EXPORT RATE.

Export rates are open and available alike for all shippers. In re Restricted Rates, 426 (434).

Lower rate upon export grain during period of navigation suggested but not required, present rate being low. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (518).

EXPRESS RATE.

Express company's packing rules found unreasonable. *Millinery Jobbers Asso. v. American Express Co.* 498.

Express rate on horses required to be reduced. *Arizona Railway Commission v. Wells, Fargo & Co.* 571 (574).

Express rates on cream in cans held unreasonable. *Cobb v. N. P. Ry. Co.* 100.

Express rates on sample brick, unreasonable. *Ohio Face Brick Mfrs. Asso. v. Adams Express Co.* 582.

Putting in by express company of prescribed reduced rates will exempt railroad from requirement to do so. *Cobb v. N. P. Ry. Co.* 100 (104).

FACILITIES.

Carrier is not obliged to furnish facilities to patrons competing with carrier; whether carrier can be required to furnish facilities for precooling service which renders useless carrier's facilities for refrigeration, not decided. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (118, 119).

Carrier may decline use of equipment furnished by shippers for movement of pre-cooled shipments but it can not refuse to furnish proper equipment upon fair terms. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (118).

Carrier's duty, under circumstances, is to furnish refrigeration, and carrier may insist upon furnishing that service exclusively. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (116).

Carriers ought to be prepared to handle sugar traffic from New York to New Jersey with their own facilities. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (207).

Carrier may not permit one shipper to provide a facility and perform a service and compensate it therefor while refusing similar privilege to another shipper. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (213).

FACILITIES—Continued.

Lower rate to large shipper providing facilities for prompt unloading than accorded small competitor unable to provide such facilities would constitute unjust discrimination. *In re Restricted Rates*, 426 (435).

No unlawful discrimination in granting exclusive warehouse facilities at carrier's terminal to a single auction company; exclusive privileges, in general, considered. *Southwestern Produce Distributors v. W. R. R. Co.* 458.

Public not required to make good carrier's blunders in erecting facilities. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (122).

Receiving station operated by competitor is not a reasonable facility to offer any shipper. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (211).

Unjust discrimination resulted from coal-car distribution rules. *Bulah Coal Co. v. P. R. R. Co.* 52.

FARES. See PASSENGER RATE.**FEEDING IN TRANSIT.**

Feeding-in-transit privilege held applicable from stations not specifically mentioned in tariff; reparation awarded. *Henry v. E. Ry. Co.* 171 (172).

FILING TARIFF.

Not required to pay demurrage unless provided for in tariff. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (569).

Reparation denied for public warehouse charges, though there was no tariff limiting free time. *Goldenberg v. Clyde S. S. Co.* 527.

Though under no obligation to secure permission for short-notice tariff, carrier's duty is to provide a rate via reasonably direct route as soon as lawful publication can be made. *Samuels & Co. v. St. L. S. W. Ry. Co.* 646 (648).

Unlawful not to file tariff stating storage charges and privileges. *Goldenberg v. Clyde S. S. Co.* 527 (529).

Unlawfully engaged in interstate commerce by carriage of traffic in respect of which no rate had been published and filed. *Maxwell v. W. F. & N. W. Ry. Co.* 197 (198).

Where shipper has paid charges for transportation service, without tariff authority therefor, jurisdiction exists to determine reasonableness of charges and to award reparation. *Goldenberg v. Clyde S. S. Co.* 527 (528); *Maxwell v. W. F. & N. W. Ry. Co.* 197 (198).

FINDINGS OF FACT.

Within broad lines of discretion courts regard Commission's conclusions on questions of fact as final. *In re Advances in Rates—Western Case*, 307 (317).

FIRE.

If carrier goes beyond its common-law liability, as to spot cars at a factory, it may predicate its undertaking upon condition that it will not be liable to the factory for losses occasioned by sparks from its locomotives. *Imperial Wheel Co. v. St. L. I. M. & S. Ry. Co.* 56 (58).

FLOOD.

Demurrage charges not unreasonable; flood caused delay in unloading. *Riverside Mills v. C. & W. C. Ry. Co.* 153.

FOREIGN RATE.

Foreign government-compelled rate as a factor in determining reasonableness of joint rate. *Steinfeld & Co. v. I. C. R. R. Co.* 12 (13).

"Transit rate" used in sense of rate applicable to business originating in United States, transported to Mexico, destined to points in United States. *Steinfeld & Co. v. I. C. R. R. Co.* 12 (13).

FOURTH SECTION. See LONG AND SHORT HAUL.**FRAGILITY.**

Fragility of commodity is an element to be considered in determining reasonableness of rate. *In re Advances in Rates—Western Case*, 307 (355).

FREE TRANSPORTATION.

Carrier may carry its own property on its own road. In re Restricted Rates, 426 (431).

Carrier may not lawfully transport free or at reduced rates materials for building, or repairs on, a refrigeration plant built under contract with carrier, but which also engages in commercial ice business. In re Restricted Rates, 426 (428).

Commission would not sanction arrangement for lease by carrier of trackage right over connecting line to quarry for purpose of hauling from that quarry with its own crew and equipment ballast for use on its line, such arrangement being regarded as device to evade lawful rates. In re Restricted Rates, 426 (428).

Persons and commodities transported for use in serving others than passengers and employees may not lawfully be carried except under regular tariff rates. In re Restricted Rates, 426 (428).

State passes issued under conditions that shock moral sense. *Shoemaker v. C. & P. Tel. Co.* 614 (618).

Unjustly discriminatory against dealers on its line for interstate carrier to operate commissary car. In re Restricted Rates, 426 (428).

Where stock in one railway company is owned by another railway company, but both maintain separate organizations and report separately to Commission, they may not carry freight free for each other. In re Restricted Rates, 426 (427).

FUEL.

Fuel cost for 1910, for western carriers, was higher than for several preceding years. In re Advances in Rates—Western Case, 307 (368).

There is likely to be some gradual advance in price of coal, and this is, of all items, the most important to the railway. In re Advances in Rates—Eastern Case, 243 (277).

FUEL RATE.

Coal rates restricted to certain consignees or when coal is for particular use, condemned. In re Restricted Rates, 426.

Local rate to junction point should be same for all shippers to that point, and through charge on shipments going beyond junction should be alike for all shippers to same destination. In re Restricted Rates, 426 (434).

GOVERNMENT GUARANTY.

It would be much better for Government to guarantee railroad bonds than to permit people to bear burden of unreasonable rates. In re Advances in Rates—Eastern Case, 243 (253).

GOVERNMENT OWNERSHIP.

Government ownership of railways referred to. In re Advances in Rates—Eastern Case, 243 (262); In re Advances in Rates—Western Case, 307 (340).

Government regulation involves proposition that construction and conduct of highways is essentially a matter for Government and not purely private initiative. *Shoemaker v. C. & P. Tel. Co.* 614 (619).

GOVERNMENT RATE.

Coal sold at price which included delivery at Government fort was not entitled to Government rate subsequently made applicable. *Havens & Co. v. C. & N. W. Ry. Co.* 156.

Improper to permit benefit of Government rate to accrue to anyone other than Government. *Havens & Co. v. C. & N. W. Ry. Co.* 156 (158).

GOVERNMENT REGULATION.

Carrier's property is subject to public use which may be regulated for public interest. *Southwestern Produce Distributors v. W. R. R. Co.* 458 (461).

Government regulation, in some respect, has largely increased carriers' revenues. *Shoemaker v. C. & P. Tel. Co.* 614 (618).

GOVERNMENT REGULATION—Continued.

Government regulation involves proposition that construction and conduct of highways is essentially a matter for Government and not purely private initiative. *Shoemaker v. C. & P. Tel. Co.* 614 (619).

Government regulation's effect upon railroads, considered. In re *Advances in Rates—Western Case*, 307 (317, 354); *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (479).

Our laws do not seek dominion over private capital except to insure public against injustice and thus make such capital more secure. In re *Advances in Rates—Western Case*, 307 (379).

GRADES.

Steep grades considered in determining reasonableness of rate. *Carstens Packing Co. v. S. P. Co.* 165 (166).

GRADUATED RATES.

Merchandise graduated rates on sample brick held unreasonable to extent that they exceeded merchandise pound rates. *Ohio Face Brick Mfrs. Asso. v. Adams Express Co.* 582.

GROUP RATE. See also BLANKET RATE, ZONE RATE.

All points in group considered in determining reasonableness of group rate. *Beall v. W. A. & M. V. Ry. Co.* 406 (407).

Group rates must be reduced or grouping changed. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (49).

Passenger fares, on interurban electric line, based on group system held unreasonable. *Beall v. W. A. & M. V. Ry. Co.* 406 (407).

HEARING.

Rates established by carriers can not be condemned except upon full hearing. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (50).

Reasonableness of individual rates not looked into upon complaint in this case. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (468).

IMPORT RATE.

Fifth class import rate on glue stock, Boston to Chicago, held unreasonable. *Barr Chemical Works v. P. & R. Ry. Co.* 77 (78).

Fundamental dissimilarity exists between domestic and import rates; domestic rate not found discriminatory in relation to lower import rate. *Furnace Run Saw Mill & Lumber Co. v. B. & M. R. R.* 586 (587).

Import rates are open to all shippers. In re *Restricted Rates*, 426 (434).

IMPROVEMENTS.

Cost of permanent improvements or extensions ought not to be treated as part of operating expense. In re *Advances in Rates—Eastern Case*, 243 (266).

Surplus may be accumulated to supply nonrevenue producing facilities. In re *Advances in Rates—Western Case*, 307 (336).

INDICTMENT. See CRIMINAL PROSECUTION.**INDIVIDUAL RATES.**

Individual rates not looked into upon complaint in this case. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (468).

INDUSTRIAL RATE.

Class rates, long in effect, forming basis of rate fabric, to which business has adjusted itself, not disturbed by Commission upon mere suggestion that better scheme might have been originally devised. In re *Advances in Rates—Eastern Case*, 243 (306).

Difficult to see how Commission, if it is to maintain parity of rate between wheat and flour, upon strength of which mills have been erected at Buffalo and throughout the country, would enforce or even permit a rate upon grain from Buffalo materially lower than rate upon flour manufactured at Buffalo from that grain. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (510).

INDUSTRIAL RATE—Continued.

State rates made for purpose of assisting local creameries in competition with centralizers. *Cobb v. N. P. Ry. Co.* 100 (102).

INDUSTRIAL ROAD.

While logging road might be a common carrier for public, it was held a plant-facility in transportation of logs of complainant. *Kaul Lumber Co. v. C. of G. Ry. Co.* 450 (455).

INFORMAL COMPLAINT.

Informal complaint showing date and weight of shipment, with allegation of unreasonableness of rate collected, is sufficient. *Riverside Mills v. G. R. R.* 423 (424).

Rule that ordinarily reparation will not be awarded upon informal proceedings unless complaint is filed or rate complained of is reduced within six months after traffic moves is confined to informal matters. *Riverside Mills v. G. R. R.* 423 (424).

INITIAL CARRIER.

Reparation awarded against initial carrier which published joint through rate in which connecting lines named therein had not concurred, combination rate legally applicable being found unreasonable. *Texico Transfer Co. v. L. & N. R. R. Co.* 17 (18).

INTENTION.

Rate restricted to shipments destined beyond Thebes was inapplicable to shipment billed to Thebes proper, despite intention to reconsign beyond Thebes. *Beekman Lumber Co. v. I. C. R. R. Co.* 98.

Released valuation omitted from bill of lading through inadvertence; reparation awarded on basis of released rate, insertion of such rate showing intention to release valuation. *Miller & Lux v. S. P. Co.* 129.

Shipment billed from one point to another in same state and delivered to shipper's agent was intrastate, though it was intended to be, and subsequently was, shipped beyond state. *Big Canon Ranch Co. v. G. H. & S. A. Ry. Co.* 523.

INTERCHANGE.

Electric line entitled to switch connection with steam road. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486.

Whether carrier could be compelled to establish reciprocal switching arrangement, not decided; but, having entered into such arrangement, carrier must accept shipments for delivery to extent of its capacity. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (565).

INTEREST.

Interest upon funded debt is a fixed charge in nature of operating expense. In *re Advances in Rates—Eastern Case*, 243 (251).

INTERMEDIATE POINT.

Blanket rate on lima beans, California to Omaha and points east thereof, not found unlawful. *Commercial Club of Omaha v. S. P. Co.* 631.

Competitive rate on salt, New York to Chicago, need not be scaled by percentages to intermediate points in C. F. A. territory. *International Salt Co. v. G. & W. R. R. Co.* 550.

Lower rate to more distant point on same line; no unjust discrimination because of competition; fourth section feature not determined. *Nebraska Material Co. v. C. B. & Q. R. R. Co.* 89.

No violation of act to maintain joint rail-lake-and-rail rates higher than rail-and-lake rates to farther-distance point where boats do not stop at complaining point. *City of Ashland v. N. Y. C. & H. R. R. R. Co.* 3.

INTERSTATE COMMERCE.

Local law under which electric line has no right to demand switch connection with steam roads can not operate as impediment to interstate traffic. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (487).

State policy not respected where it interferes with application of reasonable rates for interstate service. *Cobb v. N. P. Ry. Co.* 100 (103).

INTERURBAN LINE. See **ELECTRIC LINE.**

INTRASTATE TRAFFIC. See **STATE TRAFFIC.**

INVESTIGATION AND SUSPENSION.

Carriers asked to withdraw advanced rate schedules in eastern and western territories; if not withdrawn, order of suspension will be entered. In re *Advances in Rates—Eastern Case*, 243 (306); In re *Advances in Rates—Western Case*, 307 (379).

Cement rate advances, trans-Missouri territory; some permitted; others condemned. In re *Investigation of Advances in Rates on Cement*, 588.

Construction of amended law concerning suspension of rates. In re *Advances in Rates—Western Case*, 307 (310).

Lumber rates, *V. S. & P. Ry. Co. Tariff No. 610-B*: order entered vacating former order of suspension. In re *Proposed Schedules of Rates on Lumber*, 575.

INVESTMENT.

Dividends of little importance apart for understanding of value of investment. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (483.)

Investment as basis of value in determining reasonableness of rates. In re *Advances in Rates—Eastern Case*, 243 (258); In re *Advances in Rates—Western Case*, 307 (347).

Investment not represented by capitalization. In re *Advances in Rates—Western Case*, 307 (320).

JOINT RATE. See **THROUGH ROUTE AND JOINT RATE.**

JURISDICTION.

Commission has much less of power than Canadian Commission. In re *Advances in Rates—Western Case*, 307 (319).

Commission alone has power to determine reasonableness of a rate. In re *Advances in Rates—Western Case*, 307 (313).

Commission's jurisdiction, in a general sense, extends only to relations between carrier and passenger and carrier and shipper. *Southwestern Produce Distributors v. W. R. R. Co.* 458 (461).

Commission in establishing through routes and joint rates can act only under authority vested in it at that time. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (490).

Commission has no authority to say what amount these carriers shall earn, nor to establish a schedule which will permit them to earn that amount. In re *Advances in Rates—Eastern Case*, 243 (247).

Commission can not place control on railroad expenditures, nor direct improvements, nor enforce economies, no matter what revenue may be received. In re *Advances in Rates—Western Case*, 307 (317).

Jurisdiction exists to determine reasonableness of rate and award reparation, though rate charged was not a tariff rate. *Goldenberg v. Clyde S. S. Co.* 527 (528); *Maxwell v. W. F. & N. W. Ry. Co.* 197 (198).

Jurisdiction does not exist over shipment moving from one point to another in same state, though intended to go beyond state and subsequently rebilled beyond state. *Big Canon Ranch Co. v. G. H. & S. A. Ry. Co.* 523.

KNOCKED DOWN.

Tariff was ambiguous in not defining what was meant by "knocked down," "knocked down flat," and "completely knocked down." *Pacific Coast Biscuit Co. v. S. P. & S. Ry. Co.* 546 (548).

LABOR.

Wages, efficiency, and relation to cost of operation. In re Advances in Rates—Eastern Case, 243 (253, 276, 278); In re Advances in Rates—Western Case, 307 (333, 362).

LAKE-AND-RAIL RATE.

No violation of act to maintain joint rail-lake-and-rail rates higher than rail-and-lake rates to farther-distance point, where boats do not stop at complaining point.

City of Ashland v. N. Y. C. & H. R. R. Co. 3.

Through rate, on ex-lake grain, Chicago to Boston, is a reasonable rate and materially lower than all-rail rate. Board of Trade of Chicago v. A. C. R. R. Co. 504 (507).

LAKE SHORE & MICHIGAN SOUTHERN RY. CO.

History and operation. In re Advances in Rates—Eastern Case, 243 (303).

LAND GRANT.

Discussion of land grants to railroads. In re Advances in Rates—Western Case, 307 (318).

LAND GRANT RATE. See GOVERNMENT RATE.**LEASE.**

Carrier may doubtless wrongfully give great shipper substantial advantage by buying or renting his warehouse adjoining his factory and making it a public receiving station, and possibly under present act Commission would be powerless to redress the wrong, if public made actual use of station, unless price paid or rent reserved was excessive and transaction was therefore intended as an unlawful rebate. Federal Sugar Refining Co. v. B. & O. R. R. Co. 200 (208).

Lease by carrier of trackage rights over connecting line to a quarry for hauling ballast for use on its own line, not sanctioned; would result in discrimination. In re Restricted Rates, 426 (428).

LEGAL RATE.

Concurrence in guide book, but no concurrence in rate, though such was intended; not legal rate nor basis of reparation, tariff rate charged not being unlawful. Noble v. G. T. W. Ry. Co. 70 (71).

Instructions were to use most direct route with through rate; no rate applicable from origin to destination; though under no obligation to secure permission for short-notice tariff, carrier's duty is to provide a rate via a reasonably direct route as soon as lawful publication can be made. Samuels & Co. v. St. L. S. W. Ry. Co. 646 (648).

Joint rate, filed with Commission but not posted, held unreasonable to extent that it exceeded combination rate. Alpha Portland Cement Co. v. P. R. R. Co. 640 (642).

Jurisdiction exists to determine reasonableness and award reparation though rate charged was not a tariff rate. Goldenberg v. Clyde S. S. Co. 527 (528); Maxwell v. W. F. & N. W. Ry. Co. 197 (198).

Law requires publication, observance, and maintenance of definite transportation charges. In re Restricted Rates, 426 (429).

Naming of commodity rate takes article out of class rates; this rule does not prevent alternative use of class and commodity rates. Wheeler & Motter Mercantile Co. v. C. B. & Q. R. R. Co. 141 (145).

No increase in revenue can be hoped for in future from more thorough maintenance of published rate, since that rate is now maintained. In re Advances in Rates—Eastern Case, 243 (285).

No joint rate lawfully applicable; duty is to apply lowest combination of intermediate rates. Alpha Portland Cement Co. v. P. R. R. Co. 640 (642).

LEGAL RATE—Continued.

No lawful authority for tariff provision establishing two rates for same transportation service and same liability in connection therewith. *C. H. Algert Co. v. D. & R. G. R. R. Co.* 93 (94).

No rate in effect to destination; rate charged found unreasonable; reparation awarded. *Beekman Lumber Co. v. I. C. R. R. Co.* 98 (99).

Proportional third class rate applicable only on shipments from Atlantic seaboard did not apply to movement of cotton piece goods for which carrier maintained a commodity rate. *Wheeler & Motter Mercantile Co. v. C. B. & Q. R. R. Co.* 141.

Published rate must be paid and collected, regardless of rate quoted. *Scott v. T. & N. O. R. R. Co.* 167 (168).

Rate restricted to shipments destined beyond Thebes was inapplicable to shipment billed to Thebes proper, despite intention to reconsign beyond Thebes. *Beekman Lumber Co. v. I. C. R. R. Co.* 98 (99).

Reparation awarded against initial carrier which published joint through rate in which connecting lines named therein had not concurred, combination rate legally applicable being found unreasonable. *Texico Transfer Co. v. L. & N. R. R. Co.* 17 (18).

Specific rate being established on wax paper, such rate must be applied to all grades and qualities to wax paper regardless of use to which it is put. *Pacific Coast Biscuit Co. v. O. R. R. & N. Co.* 178 (180).

Tariffs could not be used until Commission's rules were complied with. *Noble v. G. T. W. Ry. Co.* 70 (71).

Terms of tickets and provisions of tariffs and of law determine obligations of the parties. *National Asso. of Letter Carriers v. A. T. & S. F. Ry. Co.* 6 (9).

LIGHTERAGE.

Carrier must lighter sugar itself or allow each shipper to do it in his own way, and if allowance is paid to one shipper it should be paid to another performing same service. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (215).

Lighterage regarded as an accessorial, not a transportation, service. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (211).

Little ground for denying lighterage privilege and allowance to complainant where its sugar crosses lighterage limits, while according such privilege and allowance to another shipper within lighterage limits. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (213).

Unjust discrimination resulted from paying lighterage allowance to one shipper and refusing such allowance to another shipper performing similar service. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200.

LIMITATION OF ACTION.

Complaint filed within one year after passage of 1906 act not limited to claims accruing within 2 years prior to filing complaint, all claims herein involved being within state statute of limitations. *Sondheimer v. I. C. R. R. Co.* 606 (610).

Informal complaint, showing date and weight of shipment, with allegation of unreasonableness of rate, is sufficient. *Riverside Mills v. G. R. R.* 423 (424).

Rule that ordinarily reparation will not be awarded upon informal proceedings unless complaint is filed or rate complained of is reduced within 6 months after traffic moves, is only an expression of administrative discretion and is confined to informal matters. *Riverside Mills v. G. R. R.* 423 (424).

LIMITATION OF LIABILITY. See also RELEASED RATE.

If carrier goes beyond common-law duty, such as to spot cars at a factory, it may predicate its undertaking upon condition that it will not be liable for fires occasioned by sparks from its locomotives. *Imperial Wheel Co. v. St. L. I. M. & S. Ry. Co.* 56 (58).

LOADING AND UNLOADING.

Cars might have been loaded so as to secure lower rate; consignor loaded cars; carrier not liable. *Consolidated Water Power & Paper Co. v. S. P. L. A. & S. L. R. R. Co.* 169 (170).

Damages awarded for expenditure incurred in unloading and reloading part of car, due to carrier's unlawful act in refusing to deliver carload until excessive rate was paid. *Schulz Co. v. C. M. & St. P. Ry. Co.* 403 (405).

Shipper, who orders and uses car of a certain size, must pay rate applicable thereto, though lower rate would have been available by loading in another kind of car; had shipment been delivered to carrier for loading, carrier would have been under duty of loading in manner which would result in application of lowest rate. *Clinton Bridge & Iron Works v. C. B. & Q. R. R. Co.* 416 (417).

LOCALITIES.

Alabama to Ohio River, Tennessee and Kentucky. Yellow-pine lumber, 450.

Alexandria, La., to Brownwood, Tex. Corn shucks, 410.

Allensburgh, Ohio. Through routes and joint rates, 487 (492).

Anaconda, Mont., from Diamondville, Wyo. Coal, 598.

Anaconda, Mont., from Elk Point, S. Dak. Cracked and whole corn, 15.

Ardmore, Okla., to Galveston, Tex. Cottonseed oil, 43.

Arkansas to East St. Louis, Ill. Cottonseed, 37.

Arkansas to Memphis, Tenn. Cottonseed, 33.

Arkansas to and from various points. Sleeping-car rates, 25.

Arlington, Cal., to Miles City, Mont. Citrus fruit, 421.

Ashland, Wis., from eastern points. Class rates, 3.

Atlantic seaboard to Missouri River. Cotton piece goods, 141.

Augusta, Ga. Demurrage, 153.

Augusta, Ga., to Calhoun Falls, S. C. Brick, 148.

Augusta, Ga., from Charleston, S. C. Bananas, 225.

Augusta, Ga., to Tonopah, Nev. Cotton waste, 423.

Bakersfield, Cal., from El Paso, Tex. Live stock, 129.

Baltimore, Md. Delivery to private sidetrack, 124.

Bell City, Mo., to Jacksonville, Fla. Elm hoops, 62.

Beloit, Wis., from Fort Wayne, Ind. Triplex cloth, 447.

Bennington, Vt., to Portland, Oreg. Wax paper, 178.

Bethesda district, Md. Telephone facilities, 614.

Bismarck, N. Dak., from Utah. Apples and deciduous fruits, 136.

Boston, Mass., from Charleston, S. C. Vegetables, 190.

Boston, Mass., Chicago, Ill. Glue stock, 77.

Boston, Mass., to Toledo, Ohio. Spruce lath and lumber, 586.

Boston, Ohio. Through routes and joint rates, 486 (492).

Brady, Tex., from Iola, Kans. Cement, 91.

Brigham, Utah, to North Dakota. Apples and deciduous fruits, 136.

Brilliant, Ala., to Thebes, Ill. Gum lumber, 98.

Brownwood, Tex., from Alexandria, La. Corn shucks, 410.

Buffalo, N. Y., from Charleston, S. C. Vegetables, 132.

Buffalo, N. Y., to eastern points. Grain, 504.

Burkburnett, Tex., to Devol, Okla. House blocking, 197.

Butte, Mont., en route from Utah to North Dakota. Apples and deciduous fruits, 136.

Cairo, Ill., to Mississippi and other points. Lumber, 606.

Calhoun Falls, S. C., from Augusta, Ga. Brick, 148.

California to eastern markets. Citrus fruit, 106.

California to Miles City, Mont. Citrus fruit, 421.

LOCALITIES—Continued.

- California to New Orleans, La., Texas, Oklahoma, Colorado and New Mexico. Beans, 639.
- California to Omaha, Nebr. Lima beans, 631.
- Capitan, N. Mex., to El Paso, Tex. Empty beer bottles, 237.
- Carbon Hill, Ala., to Herbert switch, Tex. Coal, 167.
- Cedar Rapids, Iowa, from Danville, Ill. Paving brick, 239.
- Charleston, S. C., to Augusta, Ga. Bananas, 225.
- Charleston, S. C., to Buffalo, N. Y., and Pittsburg, Pa. Vegetables, 132.
- Charleston district, S. C., to northern markets. Vegetables, 190.
- Chicago, Ill. Coal. Demurrage, 559.
- Chicago, Ill., from Boston, Mass. Glue stock, 77.
- Chicago, Ill., from Columbus, Ohio. Sample brick, 582 (583).
- Chicago, Ill., from Farmington, N. Mex. Goat and sheep skins, 93.
- Chicago, Ill., to Pueblo, Colo. Building and roofing paper, 79.
- Chicago, Ill., from Retsof, N. Y. Salt, 530.
- Chicago, Ill., from St. Paul, Minn. Sleeping-car rates, 21.
- Chicago, Ill., to Sturgis, S. Dak. Anthracite coal, 156.
- Chicopee Falls, Mass., to Portland, Oreg. Gas-mantle fabric, 643.
- Clatskanie Junction, Oreg., to DeBeque, Colo. Fir lumber, 151.
- Cleveland, Ohio, to Memphis, Tenn. Hardware, 64 (65).
- Clinton, Iowa, to St. Marys, Iowa. Iron bridge material, 416.
- Clinton, Iowa, from Thebes, Ill., originating at Brilliant, Ala. Gum lumber, 98.
- Colorado from California. Beans, 638.
- Columbus, Ohio, to Chicago, Ill. Sample brick, 582 (583).
- Columbus, Ohio, from Eddy, Ala., Yellow-pine lumber, 230.
- Comanche, Tex., from Iola, Kans. Cement, 91.
- Combined Locks, Wis., to Dallas, Tex. News-print paper, 419.
- Combined Locks, Wis., from Louisville, Ky. Wooden tank material, 412 (413).
- Creston, Ohio, to Windsor Shades, Va. Elm hoops, 72.
- Crosset, Ark., from Shreveport, La. Fertilizer, 554.
- Cullman, Ala., from St. Louis, Mo. Bottled beer, 550.
- Cypress, Ill., from Mississippi. Yellow-pine lumber, 228.
- Dallas, Tex. Cottonseed oil. Transit privilege, 43.
- Dallas, Tex., from Combined Locks, Wis. News-print paper, 419.
- Davenport, Iowa, from Minot and Rome, Miss. Cypress lumber, 19.
- Danville, Ill., to Cedar Rapids, Iowa. Paving brick, 239.
- DeBeque, Colo., from Clatskanie Junction, Oreg. Fir lumber, 151.
- Del Ray, Va., from Washington, D. C. Electric line passenger rate, 406.
- Depue, Ill., to Hopatcong, N. J., and Emporium, Pa. Sulphuric acid, 83.
- Detroit, Mich., from Retsof, N. Y. Salt, 539.
- Devol, Okla., from Burkburnett, Tex. House blocking, 197.
- Devol, Okla., to Olney, Tex. Rough fence posts, 197.
- Diamondville, Wyo., to Anaconda, Mont. Coal, 598.
- District of Columbia from Charleston district, S. C. Vegetables, 190.
- District of Columbia to McLean, Va. Electric line passenger rate, 232.
- District of Columbia to Virginia. Electric line passenger rate, 406.
- Dodgeville, Wis., from Richland Center, Wis. Cheese boxes, 104.
- Dodsonville, Ohio. Through routes and joint rates, 486 (492).
- Dryden, Tex., to Soldani, Okla. Sheep, 523.
- Drummon, Md. Telephone facilities, 614.
- Dubuque, Iowa, to and from Dunleith or East Dubuque, Ill. Passenger rate, 181.
- Dunleith, Ill., to and from Dubuque, Iowa. Passenger rate, 181.
- Durant, Okla., to Galveston, Tex. Cottonseed oil, 43.

LOCALITIES—Continued.

- East Dubuque, Ill., to and from Dubuque, Iowa. Passenger rate, 181.
 East St. Louis, Ill., from Oklahoma, Arkansas, Mississippi, Tennessee, and Missouri.
 Cottonseed, 37.
 Eastern markets from California. Citrus fruit, 106.
 Eastern points to Ashland, Wis. Class rates, 3.
 Eastern points from Buffalo, N. Y. Grain, 504.
 Eddy, Ala., to Columbus, Ohio, milled in transit at Meridian, Miss. Yellow-pine
 lumber, 230.
 El Paso, Tex., to Bakersfield, Cal. Live stock, 129.
 El Paso, Tex., from Capitan, N. Mex. Empty beer bottles, 237.
 El Paso, Tex., from Evansville, Ind. Mixed furniture, 17.
 El Paso, Tex., to and from Phoenix, Ariz. Horses, 571.
 Elizabeth City, N. C., from Martins Creek, Pa. Cement, 640.
 Elk Point, S. Dak., to Anaconda, Mont. Cracked and whole corn, 15.
 Elkhorn, W. Va., from Louisville, Ky. Wooden tank material, 412 (414).
 Emporium, Pa., from Depue, Ill. Sulphuric acid, 83.
 England, Ark., to Houston, Tex. Cotton linters, 646.
 Enosburg Falls, Vt., from New Village, N. J. Portland cement, 95.
 Ephrata, Pa., to Richmond, Va. Tobacco, 81.
 Erath, La., to Miles, Tex. Corn, snapped or in the shuck, 163.
 Evansville, Ind., to El Paso, Tex. Mixed furniture, 17.
 Evansville, Ind., to Huntsville, Ala. Plows, 161.
 Fairview, Ohio. Through routes and joint rates, 486 (492).
 Fargo, N. Dak., from St. Paul, Minn. Sleeping-car rates, 21.
 Fargo, N. Dak., from Utah. Apples and deciduous fruits, 136.
 Farmington, N. Mex., to Chicago, Ill. Goat and sheep skins, 93.
 Fayetteville, Ohio. Through routes and joint rates, 486 (492).
 Findlay, Ohio, from Flat Rock, Ill. Petroleum, 649.
 Flat Rock, Ill., to Findlay, Ohio. Petroleum, 649.
 Fort Wayne, Ind., to Beloit, Wis. Triplex Cloth, 447.
 Fort Worth, Tex. Cottonseed oil. Transit privilege, 43.
 Four Mile Run, Va., from Washington, D. C. Electric line railroad passenger rate
 406.
 Fourteen Mile Switch, Tenn., to Miamisburg, Ohio. Hickory rim strips, 603.
 Galveston, Tex., from Oklahoma. Cottonseed oil, 43.
 Gas-belt territory to various points. Cement, 588.
 Georgia to northern destinations. Peaches, 623.
 Gleason, Ark., to Missouri, Kansas, Nebraska, Iowa, and Illinois. Lumber, 612.
 Gowanda, N. Y., from Philadelphia, Pa. Glue stock, 77.
 Grand Forks, N. Dak., from St. Paul, Minn. Sleeping-car rates, 21.
 Grand Forks, N. Dak., from Utah. Apples and deciduous fruits, 136.
 Grand Rapids, Wis., from Los Angeles, Cal. News printing paper, 169.
 Green Bay, Wis., from Paw Paw, Mich. Grapes, 543.
 Greenville, Tex. Cottonseed oil. Transit privilege, 43.
 Gwynn's Run, Baltimore, Md. Live stock. Delivery to private side track, 124.
 Hamburg, Ark., from Shreveport, La. Fertilizer, 554.
 Hartley, Iowa, from Rainier, Oreg. Fir lumber, 10.
 Hartman, Ohio. Through routes and joint rates, 486 (492).
 Harvey, Va., to Muskegon, Mich. Ties, 86.
 Hasse, Tex., from Iola, Kans. Cement, 91.
 Herbert switch, Tex., from Carbon Hill, Ala. Coal, 167.
 Hillsboro, Ohio. Through routes and joint rates, 486 (492).
 Hoagland, Ohio. Through routes and joint rates, 486 (492).

LOCALITIES—Continued.

- Hopatcong, N. J., from Depue, Ill. Sulphuric acid, 83.
 Hot Springs, Utah, to North Dakota. Apples and deciduous fruits, 136.
 Houston, Tex., from England, Ark. Cotton linters, 646.
 Huntsville, Ala., from Evansville, Ind. Plows, 161.
 Illinois to and from various points. Sleeping-car rates, 25.
 Illinois Freight Committee territory. Commodity rates, 307.
 Indiana to and from various points. Sleeping-car rates, 25.
 Iola, Kans., to Texas points. Cement, 91.
 Jackson, Mich., from Monette, Ark. Staves, 520.
 Jacksonville, Fla., from Bell City, Mo. Elm hoops, 62.
 Jamestown, N. Dak., from Utah. Apples and deciduous fruits, 136.
 Junction City, Ark., from Memphis, Tenn. Cotton fabrics, 235.
 Kansas to and from various points. Sleeping-car rates, 25.
 Kansas City, Mo., from Vaughn, N. Mex. Sheep, 171.
 Kentucky from Alabama. Yellow-pine lumber, 450.
 Kentucky to and from various points. Sleeping-car rates, 25.
 Klamath Falls, Oreg., to Tacoma, Wash. Live stock, 165.
 Liberal, Kans., from Youngstown, Ohio. Wrought-iron pipe, 139.
 Logan, Utah, to North Dakota. Apples and deciduous fruits, 136.
 Los Angeles, Cal., to Grand Rapids, Wis. News printing paper, 169.
 Los Angeles, Cal., to and from Phoenix, Ariz. Horses, 571.
 Los Angeles, Cal., from West Virginia. Blacksmith coal, 66.
 Louisiana to Memphis, Tenn. Cottonseed, 33.
 Louisville, Ky.; to Texas and Wisconsin. Tank material, 412.
 McLean, Va., from Washington, D. C. Electric line passenger rate, 232.
 Madeira, Ohio. Through routes and joint rates, 486 (492).
 Madill, Okla., to Galveston, Tex. Cottonseed oil, 43.
 Madisonville, Ohio. Through routes and joint rates, 486 (492).
 Malvern, Ark., to Milwaukee, Wis. Chairs, 496.
 Marathon, Ohio. Through routes and joint rates, 486 (492).
 Marion, Md. Strawberries. Refrigeration, 600.
 Marshall, Tex., from Shreveport, La. Sash weights, 159.
 Martins Creek, Pa., to Elizabeth City, N. C. Cement, 640.
 Maryland from Charleston district, S. C. Vegetables, 190.
 Massachusetts from Charleston district, S. C. Vegetables, 190.
 Memphis, Tenn., to Junction City, Ark. Cotton fabrics, 235.
 Memphis, Tenn., from Michigan, Ohio, and Wisconsin. Warehouse scales, sausage casing, and hardware, 64.
 Memphis, Tenn., from Missouri, Arkansas, and Louisiana. Cottonseed, 33.
 Meridian, Miss., milled in transit at, en route Eddy, Ala., to Columbus, Ohio. Yellow-pine lumber, 230.
 Miamisburg, Ohio, from Fourteen Mile Switch, Tenn. Hickory rim strips, 603.
 Miles, Tex., from Erath, La. Corn, snapped or in the shuck, 163.
 Miles City, Mont., from California. Citrus fruits, 421.
 Milford, Ohio. Through routes and joint rates, 486 (492).
 Milwaukee, Wis., from Malvern, Ark. Chairs, 496.
 Milwaukee, Wis., to Memphis, Tenn. Sausage casing, 64.
 Milwaukee, Wis., to Spokane, Wash. Wood-pulp cartons, 403.
 Minot, Miss., to Davenport, Iowa. Cypress lumber, 19.
 Mississippi from Cairo, Ill. Lumber, 606.
 Mississippi to Cypress, Ill. Yellow-pine lumber, 228.
 Mississippi to East St. Louis, Ill. Cottonseed, 37.
 Missouri to East St. Louis, Ill. Cottonseed, 37.

LOCALITIES—Continued.

- Missouri to Memphis, Tenn. Cottonseed, 33.
 Missouri to and from various points. Sleeping-car rates, 25.
 Missouri River from Atlantic seaboard. Cotton piece goods, 141 (142).
 Monette, Ark., to Jackson, Mich. Staves, 520.
 Monterey, Ohio. Through routes and joint rates, 486 (492).
 Montgomery County, Md. Telephone facilities, 614.
 Mound Valley, Kans., to Tecumseh, Nebr. Brick, 89.
 Mount Clemens, Mich., to Ripplemead, Va. Elm hoops, 70.
 Mount Ida, Va., from Washington, D. C. Electric line passenger rate, 406.
 Muskegon, Mich., from Harvey, Va. Ties, 86.
 New Berlin, N. Y., to New Britain, Conn., originating at West Edmeston, N. Y. Lumber, 75.
 New Jersey. Lighterage of sugar, 200.
 New Jersey from Charleston district, S. C. Vegetables, 190.
 New Mexico from California. Beans, 638.
 New Orleans, La., from California. Beans, 638.
 New Village, N. J., to Williamstown and Enosburg Falls, Vt. Portland cement, 95.
 New York from Charleston district, S. C. Vegetables, 190.
 New York, N. Y. Lighterage, 200.
 New York, N. Y., from Newport, Mich. Elm hoops, 60.
 New York, N. Y., to and from North Asbury Park, N. J. Lost ticket, 557.
 Newport, Mich., to New York City. Elm hoops, 60.
 Nogales, Ariz., from St. Louis, Mo. Laundry soap, 12.
 Norfolk, Va. Strawberries. Refrigeration, 600.
 Norfolk, Va., en route from Mount Clemens, Mich., to Ripplemead, Va. Elm hoops, 70.
 North Asbury Park, N. J., to and from New York, N. Y. Lost ticket, 557.
 North Dakota from Utah, via Silver Bow, Mont. Apples and deciduous fruits, 136.
 Northville, Mich., to Memphis, Tenn. Warehouse scales, 64.
 Norwood, Ohio. Through routes and joint rates, 486 (492).
 Official classification territory. Class and commodity rates, 243.
 Official classification territory. Nucoline and Nucoa butter. Classification, 174.
 Ohio to various destinations. Sample brick, 582.
 Ohio to and from various points. Sleeping car rates, 25.
 Ohio River from Alabama. Yellow-pine lumber, 450.
 Ohio River, from Ottumwa, Iowa, destined to southeast. Tankage, 400.
 Oklahoma from California. Beans, 639.
 Oklahoma to East St. Louis, Ill. Cottonseed, 37.
 Oklahoma to Galveston, Tex. Cottonseed oil, 43.
 Oklahoma to and from various points. Sleeping-car rates, 25.
 Olney, Tex., from Devol, Okla. Rough fence posts, 197.
 Omaha, Nebr., from California. Lima beans, 631.
 Only, Va. Strawberries. Refrigeration, 600.
 Ottumwa, Iowa, to Ohio River, destined to southeast. Tankage, 400.
 Pachappa, Cal., to Miles City, Mont. Citrus fruit, 421.
 Pampa, Tex., feeding in transit at, en route from Vaughn, N. Mex., to Kansas City, Mo. Sheep, 171.
 Paw Paw, Mich., to Green Bay, Wis. Grapes, 543.
 Pennsylvania from Charleston district, S. C. Vegetables, 190.
 Pennsylvania to various destinations. Sample brick, 582.
 Peoria, Ill., to Portland, Oreg., and Seattle, Wash. Peanut roasters, 546.
 Perintown, Ohio. Through routes and joint rates, 486 (492).
 Philadelphia, Pa. Rice. Storage charges, 527.

LOCALITIES—Continued.

- Philadelphia, Pa., from Charleston, S. C. Vegetables, 190.
 Philadelphia, Pa., to Gowanda, N. Y. Glue stock, 77.
 Phoenix, Ariz., to and from California and Texas. Horses, 571.
 Pine Bluff, Ark. Switch track connection, 56.
 Pittsburg, Pa., from Charleston, S. C. Vegetables, 132.
 Pittsville, Md. Strawberries. Refrigeration, 600.
 Porterville, Cal., to Miles City, Mont. Citrus fruit, 421.
 Portland, Oreg., from Bennington, Vt. Wax paper, 178.
 Portland, Oreg., from Chicopee Falls and Springfield, Mass. Gas-mantle fabric, 643.
 Portland, Oreg., from Klamath Falls, Oreg., en route to Tacoma, Wash. Live stock, 165.
 Portland, Oreg., from Peoria, Ill. Peanut roasters, 546.
 Potsdam, N. Y., from Louisville, Ky. Wooden tank material, 412 (414).
 Prenda, Cal., to Miles City, Mont. Citrus fruit, 421.
 Pueblo, Colo., from Chicago, Ill. Building and roofing paper, 79.
 Quinns Crossing, Ohio. Through routes and joint rates, 486 (492).
 Rainier, Oreg., to Hartley, Iowa. Fir lumber, 10.
 Redlands, Cal., to Miles City, Mont. Citrus fruit, 421.
 Retsof, N. Y., to Chicago, Ill. Salt, 530.
 Retsof, N. Y., to Detroit, Mich. Salt, 539.
 Richland Center, Wis., to Dodgeville, Wis. Cheese boxes, 104.
 Richmond, Va., from Ephrata, Pa. Tobacco, 81.
 Ripplemead, Va., from Mount Clemens, Mich. Elm hoops, 70.
 Rockford, Ill., to San Francisco, Cal. Mirrors and furniture, 68.
 Rolf, Okla., to Texas. Cottonseed oil, 43.
 Rome, Miss., to Davenport, Iowa. Cypress lumber, 19.
 St. Asaph, Va., from Washington, D. C. Electric line passenger rate, 406.
 St. Elmo, Va., from Washington, D. C. Electric line passenger rate, 406.
 St. Louis, Mo. Warehouse facilities, 458.
 St. Louis, Mo., to Cullman, Ala. Bottled beer, 550.
 St. Louis, Mo., to Nogales, Ariz. Laundry soap, 12.
 St. Louis, Mo., to Texas common points. Class and commodity rates, 463.
 St. Louis, Mo., from Worcester, Mass. Paper hangings, 1.
 St. Martins, Ohio. Through routes and joint rates, 486 (492).
 St. Marys, Iowa, from Clinton, Iowa. Iron bridge material, 416.
 St. Paul, Minn.—rates between interstate points within a distance of 510 miles from. Cream in cans, 100.
 St. Paul, Minn., to Illinois, Wisconsin, Washington, and North Dakota. Sleeping-car rates, 21.
 St. Paul, Minn., from Western Passenger Association territory. Excursion rate, 6.
 Sacramento, Cal., to Trinidad, Colo. Beans, 639.
 San Francisco, Cal., to and from Phoenix, Ariz. Horses, 571.
 San Francisco, Cal., from Rockford, Ill. Furniture and mirrors, 68.
 Sanderson, Tex., to Soldani, Okla. Sheep, 523.
 Seattle, Wash., from Peoria, Ill. Peanut roasters, 546.
 Seattle, Wash., from St. Paul, Minn. Sleeping-car rates, 21.
 Shawano, Wis., from Louisville, Ky. Wooden tank material, 412 (413).
 Sherman, Tex. Cottonseed oil. Transit privilege, 43.
 Shreveport, La., to Hamburg and Crossett, Ark. Fertilizer, 554.
 Shreveport, La., to Marshall, Tex. Sash weights, 159.
 Silver Bow, Mont., en route from Utah to North Dakota. Apples and deciduous fruits, 136.
 Soldani, Okla., from Dryden and Sanderson, Tex. Sheep, 523.

LOCALITIES—Continued.

- Spokane, Wash., from Milwaukee, Wis. Wood-pulp cartons, 403.
 Springfield, Mass., to Portland, Oreg. Gas-mantle fabric, 643.
 Stephenville, Tex., from Iola, Kans. Cement, 91.
 Stonelick, Ohio. Through routes and joint rates, 486 (492).
 Stringtown, Ohio. Through routes and joint rates, 486 (492).
 Sturgis, S. Dak., from Chicago, Ill. Anthracite coal, 156.
 Superior, Wis., from St. Paul, Minn. Sleeping-car rates, 21.
 Tacoma, Wash., from Klamath Falls, Oreg. Live stock, 165.
 Tecumseh, Nebr., from Mound Valley, Kans. Brick, 89.
 Tennessee from Alabama. Yellow-pine lumber, 450.
 Tennessee to East St. Louis, Ill. Cottonseed, 37.
 Tennessee to and from various points. Sleeping-car rates, 25.
 Texas from California. Beans, 638.
 Texas to and from various points. Sleeping-car rates, 25.
 Texas common points from St. Louis, Mo. Class and commodity rates, 463.
 Thebes, Ill., from Brilliant, Ala., forwarded to Clinton, Iowa. Gum lumber, 98.
 Tishomingo, Okla., to Galveston, Tex. Cottonseed oil, 43.
 Toledo, Ohio, from Boston, Mass. Spruce lath and lumber, 586.
 Tonopah, Nev., from Augusta, Ga. Cotton waste, 423.
 Trans-Missouri territory. Cement, 588.
 Trans-Missouri territory. Commodity rates, 307.
 Trinidad, Colo., from Sacramento, Cal. Beans, 638.
 Utah to North Dakota, via Silver Bow, Mont. Apples and deciduous fruits, 136.
 Valley City, N. Dak., from Utah. Apples and deciduous fruits, 136.
 Vaughn, N. Mex., to Kansas City, Mo. Sheep, 171.
 Vera Cruz, Ohio. Through routes and joint rates, 486 (492).
 Virginia from Charleston district, S. C. Vegetables, 190.
 Virginia from Washington, D. C. Electric line passenger rates, 232.
 Wahpeton, N. Dak., from Utah points. Apples and deciduous fruits, 136.
 Washington, D. C., to McLean, Va. Electric line passenger rate, 232.
 Washington, D. C., to Virginia. Electric line passenger rate, 406.
 West Edmeston, N. Y., to New Britain, Conn. Lumber, 75.
 West Port Arthur, Tex., from Louisville, Ky. Steel tower material 412 (413).
 West Virginia to Los Angeles, Cal. Blacksmith coal, 66.
 Western Passenger Association territory to St. Paul, Minn. Excursion rate, 6.
 Western Trunk Line territory. Commodity rates, 307.
 Willard, Utah, to North Dakota points. Apples and deciduous fruits, 136.
 Williamstown, Vt., from New Village, N. J. Portland cement, 95.
 Windsor Shades, Va., from Creston, Ohio. Elm hoops, 72.
 Worcester, Mass., to St. Louis, Mo. Paper hangings, 1.
 Youngstown, Ohio, to Liberal, Kans. Wrought-iron pipe, 139.

LOGGING ROAD.

Logging road held a plant facility for purposes of present case, though it might be a common carrier for public at large. *Kaul Lumber Co. v. C. of G. Ry. Co.* 450 (455).

LONG AND SHORT HAUL.

Application for relief from fourth section to be considered later. *Big Canon Ranch Co. v. G. H. & S. A. Ry. Co.* 523 (526); *Scheuing v. L. & N. R. R. Co.* 550 (551).
 Circumstances in present case justify exception to long-and-short haul principle. *International Salt Co. v. G. & W. R. R. Co.* 530 (537).
 Fourth section feature not considered, competition justifying lower rate to farther-distance point. *Nebraska Material Co. v. C. B. & Q. R. R. Co.* 89.
 Rate adjustment apparently in conflict with fourth section. *Scott v. T. & N. O. R. R. Co.* 167 (168).

LOST TICKET.

Discriminatory to condition refund upon return of lost ticket. *Moore v. N. Y. & L. B. R. R. Co.* 557 (558).

LOW RATE.

Grain rate, Buffalo to New York, is a low rate. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (518).

Quality of commodity and revenue per ton per mile considered, corn shucks rate, Alexandria, La., to Brownwood, Tex., appears to be lower than Commission would feel justified in requiring. *Browne Grain Co. v. F. W. & R. G. Ry. Co.* 410 (411).

Rates are usually lowest in those sections where traffic is most dense. In re *Advances in Rates—Eastern Case*, 243 (275).

MAINTENANCE OF RATE.

Lower rate voluntarily established; no future rate ordered. *Barrett Mfg. Co. v. C. M. & St. P. Ry. Co.* 79 (80).

Reparation awarded but reduced rate not required to be maintained. *Hartman Furniture & Carpet Co. v. C. R. I. & P. Ry. Co.* 496 (497).

MANAGEMENT.

Before any general advance can be permitted, it must appear that carriers have exercised proper economy in conduct of their business. In re *Advances in Rates—Eastern Case*, 243 (305).

Commission is not manager of railroads. In re *Advances in Rates—Western Case*, 307 (317).

Cost figures indicate that under skillful management additional tonnage may be handled under higher wages without increasing cost of service. In re *Advances in Rates—Western Case*, 307 (378).

Increase in railroad efficiency. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (481).

It is not apparent that public should stand responsible for mistakes made in management of railroads. In re *Advances in Rates—Eastern Case*, 243 (267); *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (122).

Railroads must be maintained in state of high efficiency. In re *Advances in Rates—Eastern Case*, 243 (262).

Railroad management should be most progressive. In re *Advances in Rates—Western Case*, 307 (317).

Rates can not be advanced because of wasteful, corrupt, or indifferent management. In re *Advances in Rates—Western Case*, 307 (333).

Something should be expected from introduction of additional economies. In re *Advances in Rates—Eastern Case*, 243 (285).

MARKET VALUE.

Market value of commodity considered in determining classification. *Nucoa Butter Co. v. E. R. R. Co.* 174 (175).

Market value of railroad property discussed. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (474).

Market value of stock should be considered but such rates can not be allowed as will guarantee prices at which stock was bought. In re *Advances in Rates—Eastern Case*, 243 (260).

MARKETS. See also ADVANTAGE.

All markets can not be opened to every producing point. In re *Advances in Rates—Western Case*, 307 (354).

Each market has right to insist upon rate adjustment that is fair. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (507).

MARKING PACKAGES.

All questions as to marking packages ought to be settled before carrier accepts goods, reasonable rules as to marking and packing being proper. *C. H. Algert Co. v. D. & R. G. R. R. Co.* 93 (94).

Rule condemned which provided for higher rate on packages not properly marked; reparation awarded. *C. H. Algert Co. v. D. & R. G. R. R. Co.* 93 (94).

Rule neither unreasonable nor discriminatory which required low-priced cotton-factory products to be plainly marked on outside of package and stated in bill of lading in order to secure lower rate dependent upon value; reparation denied. *Muse Bros. Co. v. C. R. I. & P. Ry. Co.* 235 (236).

MAXIMUM RATE.

Congress has not fixed a body of maximum rates. In re *Advances in Rates—Western Case*, 307 (314).

MEASURE OF RATE. *See also* REASONABLE RATE.

Elements to be considered in determining reasonable. In re *Advances in Rates—Eastern Case*, 243 (256).

It may not answer public needs to always measure rates by any fixed standard, but deviations from standard should be made primarily with regard to public advantage, rather than to volume of freight which carrier may secure. In re *Advances in Rates—Western Case*, 307 (355).

There can be no rule whereby definite absolute maximum limit of reasonableness can be fixed with certainty of a demonstration. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (49).

Under regulation a reasonable rate is one which shipper should pay in justice to carrier which renders service. In re *Advances in Rates—Western Case*, 307 (356).

With exception of long-and-short-haul provisions, law does not prescribe measure of reasonableness; facts, circumstances and conditions therefore to be considered. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 37 (42).

MEETING RATE.

Carrier with long haul not obliged to meet rate of short-line competitor. *Georgia-Carolina Brick Co. v. S. Ry. Co.* 148 (149).

Commission hardly prepared to find that discrimination necessarily results from fact that all-rail carriers insist upon meeting lake-and-rail rate. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (509).

MEXICAN RATE. *See* FOREIGN RATE.

MICHIGAN CENTRAL R. R. CO.

History and operation. In re *Advances in Rates—Eastern Case*, 243 (303).

MIDNIGHT TARIFF.

Short-term commodity rates suggestive of midnight tariff. *Du Pont de Nemours Powder Co. v. D. & N. R. R. Co.* 83 (85).

MILLING IN TRANSIT. *See* TRANSIT PRIVILEGE.

MINIMUM. *See also* WEIGHT.

Reduction in minimum without increase in rate per 100 pounds would reduce car-load earnings and be equivalent to reduction in rate; reduced minimum carload weight denied. *Georgia Fruit Exchange v. S. Ry. Co.* 623 (630).

Where apples are given a lower rate than other deciduous fruits they are subject to higher minimum weights. *Stacy & Sons v. O. S. L. R. R. Co.* 136 (137).

MISQUOTATION.

Initial carrier liable in reparation where it published joint through rate in which connecting lines had not concurred, combination rate legally applicable being found unreasonable. *Texico Transfer Co. v. L. & N. R. R. Co.* 17 (18).

Published rate must be paid and collected regardless of rate quoted; reparation denied. *Scott v. T. & N. O. R. R. Co.* 167 (168).

MISROUTING.

After unrouted shipment had moved, agent's signing bill of lading containing routing could not render carrier liable for misrouting. *Bookwalter Wheel Co. v. T. C. R. R. Co.* 603 (605).

Carrier relieved of duty of ascertaining whether shipment could be forwarded via cheaper route where instructions are given. *West Oregon Lumber Co. v. A. & C. R. R. Co.* 151 (152).

Carrier can not disregard routing instructions without incurring liability for resulting damages. *Noble v. J. L. C. & E. R. R. Co.* 520 (522).

Connecting line, failing to observe reconsignment order, liable in reparation for misrouting. *Noble v. J. L. C. & E. R. R. Co.* 520.

Immaterial that longer route was selected as same rate applicable via both routes. *Browne Grain Co. v. F. W. & R. G. Ry. Co.* 410.

Initial, not intermediate, carrier liable in damages for misrouting. *Platten Produce Co. v. K. L. S. & C. Ry. Co.* 543.

Instructions followed; no misrouting. *Empire Wall Paper Co. v. B. & M. R. R.* 1; *Independent Supply Co. v. C. & P. R. R. Co.* 66; *Parfrey v. C. M. & St. P. Ry. Co.* 104 (105); *West Oregon Lumber Co. v. A. & C. R. R. Co.* 151 (152).

Instructions were to use most direct route with through rate; no rate applicable from origin to destination; shipment forwarded via circuitous route; rate via route used not unreasonable, but reparation awarded on basis of subsequently established rate via more direct route. *Samuels & Co. v. St. L. S. W. Ry. Co.* 646 (648).

Jurisdiction exists to award rate damages resulting from misrouting. *Noble v. J. L. C. & E. R. R. Co.* 520 (522).

No misrouting to forward unrouted shipment via one route, though terminal delivery more satisfactory to consignee could have been secured without additional charge via another available route. *Bookwalter Wheel Co. v. T. C. R. R. Co.* 603.

No misrouting to forward unrouted shipment via one route, though reconsignment privilege was permitted over another available route. *Crescent Lumber Co. v. I. C. R. R. Co.* 228.

Refund authorized for overcharge caused by misrouting. *Beekman Lumber Co. v. I. C. R. R. Co.* 98.

Reparation awarded for failing to route via lower combination. *C. H. Algert Co. v. D. & R. G. R. R. Co.* 93 (94).

Shipment should have moved across lake via car ferry. *Platten Produce Co. v. K. L. S. & C. Ry. Co.* 543.

MISSOURI, KANSAS & TEXAS SYSTEM.

Capitalization. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (474).

MIXED CARLOAD.

Cracked and whole corn; reduction ordered. *McCaull-Dinsmore Co. v. C. M. & St. P. Ry. Co.* 15.

Looking-glasses and furniture. *O'Brien Commercial Co. v. C. & N. W. Ry. Co.* 68.

Tariff providing more advantageous rates and mixed carload privileges for building and roofing paper than for building and roofing felt, other than wool felt, unreasonable. *Barrett Mfg. Co. v. C. M. & St. P. Ry. Co.* 79 (80).

MONOPOLY. See also ANTITRUST ACT.

Railroad is a monopoly; its rates are not made under influence of competition. *In re Advances in Rates—Eastern Case*, 243 (280).

NEW YORK CENTRAL & HUDSON RIVER R. R. CO.

History and operations. *In re Advances in Rates—Eastern Case*, 243 (297).

NEWS STAND.

Newsstand at station is no part of transportation service. *Southwestern Produce Distributors v. W. R. R. Co.* 458 (460).

NONAGENCY STATION.

Bookwalter Wheel Co. *v.* T. C. R. R. Co. 603.

OBSOLESCENCE.

Cost of construction should contain no factor of obsolescence; when a thing goes out of service, its value should be written off. In re Advances in Rates—Eastern Case, 243 (271).

Railroad may properly accumulate funds to meet obsolescence, unless this charge is taken care of in maintenance. In re Advances in Rates—Western Case, 307 (336).

OFFICIAL CLASSIFICATION TERRITORY.

Described. In re Advances in Rates—Eastern Case, 243 (245).

OPERATING EXPENSES.

Cost of operating main lines as distinguished from branch lines. In re Advances in Rates—Western Case, 307 (359).

Distribution of operating expenses between conducting transportation, maintenance of way and structures, and maintenance of equipment. In re Advances in Rates—Western Case, 307 (357).

Operating expense as element to be considered in determining reasonableness of rate. In re Advances in Rates—Eastern Case, 243 (261).

Permanent improvements not part of operating expense. In re Advances in Rates—Eastern Case, 243 (266).

Segregation of passenger and freight expenses. In re Advances in Rates—Eastern Case, 243 (254); In re Advances in Rates—Western Case, 307 (357).

ORANGES.

Oranges possibly to be classed among luxuries; their value; risk, and loading. Commercial Club of Omaha *v.* S. P. Co. 631 (635).

Oranges; their movement under ventilation, refrigeration, and precooling. Arlington Heights Fruit Exchange *v.* S. P. Co. 106 (117).

ORDER. See also REHEARING.

Carriers required to cancel advanced rates, but no order entered. In re Advances in Rates—Eastern Case, 243 (306); In re Advances in Rates—Western Case, 307 (379).

OVERCHARGE.

Carrier ought promptly to refund plain overcharges. National Refrigerator & Butcher Supply Co. *v.* I. C. R. R. Co. 64.

Demurrage must be refunded where charges resulted from carrier's wrongful refusal to deliver until excessive rate was paid. Schulz Co. *v.* C. M. & St. P. Ry. Co. 403 (405).

Order entered for refund of overcharge. National Refrigerator & Butcher Supply Co. *v.* I. C. R. R. Co. 64 (65); Wheeler Lumber, Bridge & Supply Co. *v.* A. & C. R. R. Co. 10 (11).

Overcharge admitted. Browne Grain Co. *v.* G. C. & S. F. Ry. Co. 163; Edison Portland Cement Co. *v.* D. L. & W. R. R. Co. 95 (96).

Overcharge resulted from failure to apply lowest combination, in absence of joint through rate. Alpha Portland Cement Co. *v.* P. R. R. Co. 640 (642).

Refund authorized for overcharge caused by misrouting. Beekman Lumber Co. *v.* I. C. R. R. Co. 98.

Straight overcharge; no order required. American Cigar Co. *v.* P. & R. Ry. Co. 81; Georgia-Carolina Brick Co. *v.* S. Ry. Co. 148 (149); National Refrigerator & Butcher Supply Co. *v.* I. C. R. R. Co. 64 (65); Pacific Coast Biscuit Co. *v.* S. P. & S. Ry. Co. 546 (549); Riverside Mills *v.* G. R. R. 423 (424).

PACKAGE RATES.

No objection to. National League of Commission Merchants of U. S. *v.* A. C. L. R. R. Co. 132 (135).

PACKING.

Application of present minimum weights to millinery packed in pasteboard or strawboard boxes not unreasonable; nor is refusal to accept such shipments when not crated. *Millinery Jobbers Asso. v. American Express Co.* 498.

Application of present minimum weights to shipments in corrugated paper or pulp cartons of certain size, when uncrated, unreasonable. *Millinery Jobbers Asso. v. American Express Co.* 498.

Carrier may refuse to accept shipments in improper containers; it is reasonable to discourage unsafe shipping methods and unsafe cases. *Millinery Jobbers Asso. v. American Express Co.* 498 (502).

Carrier may establish reasonable regulations requiring proper packing before acceptance of goods. *C. H. Algert Co. v. D. & R. G. R. R. Co.* 93 (94).

PAPER RATE.

Rate based on reconsignment rate was a paper rate because of possible manipulation. *Sondheimer Co. v. I. C. R. R. Co.* 606 (609).

PARALLEL LINE.

Commission ordinarily will not assist one carrier to secure traffic reasonably tributary to another road by requiring through routes and joint rates. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (492).

PARTIES.

Before amendment of 1910, a lateral line filed complaint for switch connection; subsequently letters were received from shippers asking to be made co-complainants; before submission of case, act was amended permitting lateral lines to file such complaints; held, proper parties were before Commission. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (489).

Carriers under joint through rate are severally liable for damages from violation of act in which they participate. *Sondheimer Co. v. I. C. R. R. Co.* 606 (610).

Commission stands for entire public, including railways, nor merely for technical rights of individual shipper. In re *Advances in Rates—Eastern Case*, 243 (250); In re *Advances in Rates—Western Case*, 307 (315).

Complainant died after complaint filed; widow substituted as complainant. *Bulah Coal Co. v. P. R. R. Co.* 52.

Complaint brought by commission merchants and others; reparation to be awarded. *National League of Commission Merchants of U. S. v. A. C. L. R. R. Co.* 132 (135).

Connecting line, failing to observe reconsignment order, liable in reparation for misrouting. *Noble v. J. L. C. & E. R. R. Co.* 520 (522).

Difficult to award damages to a complainant carrier on account of rates in establishment and division of which it was a party. *Kaul Lumber Co. v. C. of G. Ry. Co.* 450 (454).

Dismissal without prejudice on account of nonjoinder of certain carriers. *Barr Chemical Works v. P. & R. Ry. Co.* 77.

Initial, not connecting line, liable in damages for misrouting. *Platten Produce Co. v. K. L. S. & C. Ry. Co.* 543.

Initial carrier liable in reparation to shipper where it published joint through rate in which connecting lines therein named had not concurred, combination rate legally applicable being found unreasonable. *Texico Transfer Co. v. L. & N. R. R. Co.* 17 (18).

Rate not paid by complainant; no order for reparation entered. *Fullerton Powell Hardwood Lumber Co. v. V. & S. W. Ry. Co.* 86 (88); *Kaul Lumber Co. v. C. of G. Ry. Co.* 450 (454); *Rosenblatt & Sons v. C. & N. W. Ry. Co.* 447 (448).

Rates of carrier not made party defendant held not to be in issue. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.* 33 (36).

PARTIES—Continued.

Shipper has standing before Commission though no interest in traffic concerned.

In re Advances in Rates—Western Case, 307 (315).

Whether assignee can maintain proceedings in his own name to recover reparation, not decided. *O'Brien Commercial Co. v. C. & N. W. Ry. Co.* 68 (69).

PASSENGER RATE. See also COMMUTATION RATE.

Passenger rates on electric line, Washington, D. C., to Virginia points, unreasonable; reduction required. *Beall v. W. A. & M. V. Ry. Co.* 406 (409).

Total charge of 30 cents per passenger, consisting of a toll of 25 cents and mileage, for passage across Dubuque bridge, not unreasonable. *Railroad Commissioners of Iowa v. I. C. R. R. Co.* 181.

PAST RATE.

Presumption, from long maintenance, that rate was sufficiently high may be weakened by showing that past rate was induced by competition. *Audley Hill & Co. v. S. Ry. Co.* 225 (226); *Commercial Club of Omaha v. S. P. Co.* 631 (636).

PEACHES.

Picking, packing, loading, and refrigeration. *Georgia Fruit Exchange v. S. Ry. Co.* 623.

PENNSYLVANIA CO.

History and operation. In re Advances in Rates—Eastern Case, 243 (294).

PENNSYLVANIA R. R. CO.

History and operation. In re Advances in Rates—Eastern Case, 243 (291).

PERCENTAGE RATE.

Competitive rate on salt, New York to Chicago, need not be scaled by percentages to intermediate points in C. F. A. territory. *International Salt Co. v. G. & W. R. R. Co.* 530.

PERISHABLE FREIGHT.

In shipment of fruit, distance, time in transit and dispatch are of prime importance.

Stacy & Sons v. O. S. L. R. R. Co. 136 (138).

PERSONALITY.

Rates on coal applicable only to shipments of certain consignors or consignees, condemned. In re Restricted Rates, 426.

PIECEMEAL.

Ordinarily reparation will not be awarded unless claimed before submission of case; reparation denied. *Freeman Lumber Co. v. St. L. I. M. & S. Ry. Co.* 612 (613).

PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RY. CO.

History and operation. In re Advances in Rates—Eastern Case, 243 (296).

PLANT-FACILITY.

Logging road, which might be a common carrier for public generally, held a plant-facility for purposes of this case. *Kaul Lumber Co. v. C. of G. Ry. Co.* 450 (455).

POLICE POWER.

Local law can not be permitted to operate as an impediment to movement of interstate traffic. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (487).

POOR ROAD. See WEAK LINE.**PORT DIFFERENTIALS.**

Application for wider differentials on ex-lake grain in favor of Baltimore, dismissed; pending case presents same subject. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (518).

PORT OF CALL.

Commission has no authority to compel boat lines to run boats to Ashland. *City of Ashland v. N. Y. C. & H. R. R. R. Co.* 3 (5).

POSTING TARIFF.

Rate, filed with Commission, but not posted at station, unreasonable to extent that it exceeded combination of locals. *Alpha Portland Cement Co. v. P. R. R. Co.* 640 (642).

Reparation awarded against initial carrier which published joint through rate in which connecting lines named therein had not concurred, combination rate legally applicable being found unreasonable. *Texico Transfer Co. v. L. & N. R. R. Co.* 17 (18).

Unlawful not to publish rates and charges; but, though rate charged was not a tariff rate, jurisdiction exists to determine reasonableness and award reparation. *Goldenberg v. Clyde S. S. Co.* 527 (528); *Maxwell v. W. F. & N. W. Ry. Co.* 197 (198).

POTENTIAL COMPETITION.

Potential competition considered in fixing rates. *Audley Hill & Co. v. S. Ry. Co.* 225 (226).

PRACTICE AND PROCEDURE.

Commission has endeavored to simplify its practice and procedure, without permitting technical matters to interfere with substantial results. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (489).

PRECOOLING.

Additional charges in connection with precooled shipments. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (120).

Carrier's entire duty is discharged when it places precooled car on its train and hauls it to destination. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (116).

Fruit may be safely transported under precooling method. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (113); *Georgia Fruit Exchange v. S. Ry. Co.* 623 (626).

Precooling charges on oranges, California to east, found unreasonable. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (123).

Precooled shipments, without additional compensation, are more desirable traffic than either ventilated or refrigerated movement. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (121).

Shipper not obliged to submit fruit to hazard of precooling which carrier declines to guarantee; shipper has right to precool and price his shipment. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (119, 120).

PREFERENCE. See also DISADVANTAGE, DISCRIMINATION.

Good faith will not save a transaction from condemnation if it involves unjust preferences. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (215).

Intermediate point was not unduly prejudiced by maintenance of lower rate to farther-distance point, there being no competition nor resulting damages. *Scheuing v. L. & N. R. R. Co.* 550 (551).

No unjust preference resulted from granting to one auction company exclusive warehouse facilities at terminal. *Southwestern Produce Distributors v. W. R. R. Co.* 458.

Proportional rate on tankage, Ottumwa, Iowa, to Ohio River, was higher than proportional from Kansas City to Ohio River; lower rate, subsequently extended to Ottumwa, was a compelled rate; previous rate adjustment held not unduly preferential. *Morrell & Co. v. C. B. & Q. R. R. Co.* 400.

Restricting rates to certain consignors or consignees or when commodity is put to a particular use is a violation of section 3. In re Restricted Rates, 426 (437).

Same distance from A to B as from A to C; rate to C was lower; no unjust preference because of competitive conditions. *Blake & Son Hardware & Mfg. Co. v. B. & O. R. R. Co.* 139 (140).

PREFERENCE—Continued.

Undue preference resulted from granting transit privilege on lumber at Memphis and denying it at Cairo under existing rate adjustment; damages awarded. *Sondheimer Co. v. I. C. R. R. Co.* 606.

Undue preference resulted from payment of lighterage allowance to one shipper while refusing such allowance to another shipper performing same service. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200.

Undue preference resulted from coal-car distribution rules; shipper is entitled not only to receive fair proportion and use of carrier's equipment, but may protest against competitor's being given a supply of cars in excess of his just proportion. *Bulah Coal Co. v. P. R. R. Co.* 52 (54).

Undue preference resulted from demand for higher charges than demanded of old subscribers for same telephone service and facilities. *Shoemaker v. C. & P. Tel. Co.* 614 (621).

Zone system of commutation fares held not unduly prejudicial. *Boyle v. G. F. & O. D. R. R. Co.* 232 (234).

PREICING. See **PRECOOLING.**

PREJUDICE. See **PREFERENCE.**

PRESUMPTION.

Carriers are presumed to act in good faith. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (50).

No presumption of law that rate, condemned as unreasonable or reduced by carrier, was unreasonable for any particular period in past. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (50); *Riverside Mills v. G. R. R.* 423 (425).

No presumption of unreasonableness arises from theory that advanced rates were established as result of agreement among carriers. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (465).

Presumption, from long maintenance, that rate was sufficiently high may be weakened by showing that past rate was induced by competition. *Audley Hill & Co. v. S. Ry. Co.* 225 (226); *Commercial Club of Omaha v. S. P. Co.* 631 (636).

There is a strong presumption that rates largely the product of competition are reasonable rates. In re *Advances in Rates—Eastern Case*, 243 (259).

PRIVATE EQUIPMENT.

Carrier may insist upon furnishing all equipment needed for movement of precooled shipments and might decline to use equipment furnished by shippers. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (118).

Discrimination alleged because of refusal to permit complainant to purchase some cars, in refusal to permit use of cars by complainant while permitting such use by others, and in temporarily keeping out of service other cars of complainant, pending dispute as to terms of contract. *Bulah Coal Co. v. P. R. R. Co.* 52 (55).

PRIVATE TRACK.

Carrier may insist upon release from liability for fires on complainant's premises as condition precedent to operation of private sidetrack. *Imperial Wheel Co. v. St. L. I. M. & S. Ry. Co.* 56 (59).

Carrier required to deliver live stock to complainant's sidetrack. *Baltimore Butchers Live Stock Co. v. P. B. & W. R. R. Co.* (128).

PRIVILEGES.

Carrier must accord lighterage privilege and make same allowance to competitor in same business, reaching same market, as is accorded to favored shipper. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (213).

Commission does not endeavor to establish or extend transit privileges in absence of discrimination, proof of which is wanting in this case. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (47).

PRIVILEGES—Continued.

No unjust preference to give one auction company exclusive warehouse facilities at terminals. *Southwestern Produce Distributors v. W. R. R. Co.* 458.

Transit privilege held applicable from station not specifically mentioned in tariff; reparation awarded. *Henry v. E. Ry. Co.* 171 (172).

Transit privilege temporarily withdrawn through inadvertence; reparation awarded on shipments moving during period when privilege was not permitted. *Crescent Lumber Co. v. M. & O. R. R. Co.* 230.

Yarding-in-transit privilege on lumber, granted at Memphis and denied at Cairo, resulted in unjust discrimination under existing rate adjustment; damages awarded. *Sondheimer Co. v. I. C. R. R. Co.* 606.

PROFITS. See also REVENUE.

Loss of profits due to inability to compete in common markets can not become subject of reparation. *Sondheimer Co. v. I. C. R. R. Co.* 606 (608).

Profits of shippers, not a test of reasonableness of rate. *Truck Growers Asso. v. A. C. L. R. R. Co.* 190 (195).

PROHIBITION LAW.

Probable effect of state prohibition law upon tonnage, immaterial. *Scheuing v. L. & N. R. R. Co.* 550 (552).

PROHIBITIVE RATE.

Prohibitive rate will result in loss of revenue. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (482).

Rate so high that traffic would not move. *In re Investigation of Advances in Rates on Cement*, 588 (596.)

PROPORTIONAL RATE.

Proportional rate, like any other rate, should be open to all shippers. *In re Restricted Rates*, 426 (436).

Proportional third class rate applicable only on shipments from Atlantic seaboard did not apply to movements of cotton piece goods for which commodity rate was maintained. *Wheeler & Motter Mercantile Co. v. C. B. & Q. R. R. Co.* 141.

Proportional rate reduced to basis of competitive proportional rate; reparation denied on basis of reduced rate. *Morrell & Co. v. C. B. & Q. R. R. Co.* 400.

Rate restricted to shipments destined beyond Thebes held inapplicable to shipment billed to Thebes proper, despite intent to reconsign beyond Thebes. *Beekman Lumber Co. v. I. C. R. R. Co.* 98 (99).

PROSECUTION. See CRIMINAL PROSECUTION.**PUBLIC AGENCY.**

Carrier, a public agency. *In re Advances in Rates—Western Case*, 307 (357).

PUBLIC DEMANDS.

Demands of public will continue to grow. *In re Advances in Rates—Eastern Case*, 243 (285).

Public is demanding a better and safer railroad. *In re Advances in Rates—Eastern Case*, 243 (276).

PUBLIC INTEREST.

Commission stands for entire public, including railways. *In re Advances in Rates—Eastern Case*, 243 (250).

Every rate question is a public question. *In re Advances in Rates—Western Case*, 307 (315).

Increase in carriers' revenues resulting from enforcement of law accrues also to public. *Shoemaker v. C. & P. Tel. Co.* 614 (620).

Not much importance to public by what route traffic is handled. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (507).

Probable effect upon oil business should be known before lower rate be required for petroleum than for its finished products. *National Refining Co. v. C. C. C. & St. L. Ry. Co.* 649 (650).

PUBLIC POLICY.

Question of rate advances may, within certain limits, be considered one of public policy and not one of strictly legal right. In re Advances in Rates—Eastern Case, 243 (266).

PUBLISHING RATE. *See* POSTING TARIFF.

PULLMAN RATE. *See* SLEEPING-CAR RATE.

QUALITY.

Quality of commodity considered in determining reasonableness of rate. Browne Grain Co. v. F. W. & R. G. Ry. Co. 410 (411); Rosenblatt & Sons v. C. & N. W. Ry. Co. 447 (448).

RAIL-LAKE-AND-RAIL RATE.

No violation of act to maintain joint rail-lake-and-rail rates higher than rail-and-lake rates to farther distance point, where boats do not stop at complaining point. City of Ashland v. N. Y. C. & H. R. R. Co. 3.

RAILROAD.

Carrier, a public agency. In re Advances in Rates—Western Case, 307 (357). Next to agriculture, railroads are greatest single industry in this country. In re Advances in Rates—Eastern Case, 243 (250).

Railroad is a public highway. In re Advances in Rates—Eastern Case, 243 (262).

Railroads carry on public function and are therefore subject to public regulation. Shoemaker v. C. & P. Tel. Co. 614 (619).

Railroad is a monopoly; its rates are not made under influence of competition. In re Advances in Rates—Eastern Case, 243 (280).

Railroads should be kept in high state of efficiency and rates should be sufficient to permit this. In re Advances in Rates—Eastern Case, 243 (250).

RAILROAD CONSIGNEE.

Rates on coal restricted to certain consignees or when coal is for a particular use, condemned. In re Restricted Rates, 426.

Local rate to junction point should be same for all shippers to that point, and through charge on shipments going beyond junction should be alike for all shippers to same destination. In re Restricted Rates, 426 (434).

RAILROAD MATERIAL. *See* COMPANY MATERIAL.

RATES.

Certainty and stability of rates are virtues much to be desired. In re Advances in Rates—Western Case, 307 (356).

Interstate rates in this country have not been constructed, as a rule, upon any scientific basis. In re Advances in Rates—Eastern Case, 243 (248).

Rate is a tax laid upon nearly every species of property and upon almost every sort of activity. In re Advances in Rates—Eastern Case, 243 (263).

Rates ordinarily considered by Commission, not from revenue standpoint, but from commercial and traffic standpoint. In re Advances in Rates—Eastern Case, 243 (248).

Standard of rates must be so high that the needed carrier which serves public with honesty may live; yet rates should still be so much below the possible maximum as to give high and exceptional reward to especially capable management. In re Advances in Rates—Western Case, 307 (334).

RAW MATERIAL.

Difficult to see how Commission, if it is to maintain parity of rate between wheat and flour, could enforce or even permit a rate upon grain from Buffalo materially lower than rate upon flour manufactured at Buffalo from that grain. Board of Trade of Chicago. v. A. C. R. R. Co. 504 (510).

General rule is that manufactured products bear higher rates than raw material, but there are some exceptions to this rule. East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co. 37 (40); National Refining Co. v. C. C. C. & St. L. Ry. Co. 649 (650).

RAW MATERIAL—Continued.

Same rate on petroleum and its products, not improper. *National Refining Co. v. C. C. C. & St. L. Ry. Co.* 649 (650).

Value of raw material and manufactured products substantially differs, and frequently risk incident to transportation of latter is greater. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 37 (40).

REASONABLE RATE. See also MEASURE OF RATE.

Carrier's duty is to provide a rate via a reasonably direct route as soon as lawful publication can be made, though under no obligation to secure permission for short-notice tariff. *Samuels & Co. v. St. L. S. W. Ry. Co.* 646 (648).

Commission alone has power to determine reasonableness of rate. *In re Advances in Rates—Western Case*, 307 (313).

Higher rates ought not to be imposed on territory involved than are adequate for typical roads named. *In re Advances in Rates—Eastern Case*, 243 (274).

Impracticable for carriers or Commission to determine at what exact time a rate which was reasonable when established becomes unreasonable. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (50).

Rate reasonable when established may become unreasonable by virtue of changed circumstances. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (50); *Riverside Mills v. G. R. R.* 423 (425); *Steinfeld & Co. v. I. C. R. R. Co.* 12 (14).

Reasonableness of a rate is to be determined by no mere mathematical calculation. *In re Advances in Rates—Western Case*, 307 (315).

There can be no rule or process whereby definite absolute maximum limit of reasonableness of rate can be fixed with certainty of a demonstration. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (49).

REBATES.

Increase in carriers' revenues as result of prohibition of rebates. *In re Advances in Rates—Eastern Case*, 243 (284); *In re Advances in Rates—Western Case*, 307 (353); *Shoemaker v. C. & P. Tel. Co.* 614 (618).

REBILLING.

No jurisdiction over shipment moving from one point to another in same state, though it was intended for, and subsequently was rebilled, beyond state. *Big Canon Ranch Co. v. G. H. & S. A. Ry. Co.* 523.

RECIPROCAL SWITCHING.

Whether carrier could be compelled to establish reciprocal switching arrangement, not decided; but, having entered into such agreement, under tariff authority, carrier must accept shipments for delivery to extent of its capacity. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (565).

RECONSIGNMENT.

Carrier can limit number of free reconsignments permitted on any car. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (570).

Connecting line, failing to observe reconsignment order, liable in reparation for misrouting. *Noble v. J. L. C. & E. R. R. Co.* 520.

No misrouting to forward unrouted shipment via one route though a reconsignment privilege was permitted over another available route. *Crescent Lumber Co. v. I. C. R. R. Co.* 228.

Shipment billed to Thebes proper; reconsignment charge unpaid, but alleged intent was to consign beyond Thebes; rate restricted to shipments destined beyond Thebes held inapplicable. *Beekman Lumber Co. v. I. C. R. R. Co.* 98 (99).

Shipment, billed and moving from one point to another in same state, subsequently rebilled beyond state; first movement was intrastate. *Big Canon Ranch Co. v. G. H. & S. A. Ry. Co.* 523.

REDUCTION. See VOLUNTARY RATE AND VOLUNTARY REDUCTION.

REFINING IN TRANSIT.

Petition for refining-in-transit privilege denied; no proof of discrimination. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (47).

REFRIGERATION.

Carriers' undertaking to supply refrigeration can not be interpreted as offer to overcome physical conditions and characteristics that are natural to traffic. *Georgia Fruit Exchange v. S. Ry. Co.* 623 (627).

Refrigeration rates on oranges, California to eastern markets, not found unreasonable. *Arlington Heights Fruit Exchange v. S. P. Co.* 106.

Refrigeration rates on strawberries, Virginia and Maryland to various destinations, unreasonable. *Sweeney, Lynes & Co. v. N. Y. P. & N. R. R. Co.* 600.

REFUND. See OVERCHARGE.**REFUSAL.**

Carrier may decline to use equipment, needed for precooling, furnished by shippers, but it can not refuse to furnish proper equipment upon fair terms. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (118).

Damages awarded for demurrage and for expense incurred in unloading and reloading part of carload as result of carrier's refusal to deliver except upon payment of excessive charges. *Schulz Co. v. C. M. & St. P. Ry. Co.* 403 (405).

Refusal to deliver live stock to complainant's sidetrack at Gwynns Run, Baltimore, was a violation of the law; delivery required. *Baltimore Butchers Live Stock Co. v. P. B. & W. R. R. Co.* 124.

Refusal to furnish telephone service and facilities at same rates as accorded old subscribers held unjust discrimination. *Shoemaker v. C. & P. Tel. Co.* 614.

REGULATION. See GOVERNMENT REGULATION.**REHEARING.**

Granted, and previous order modified. *Loftus v. Pullman Co.* 21; *Platten Produce Co. v. K. L. S. & C. Ry. Co.* 543.

Previous order vacated and original complaint dismissed, upon rehearing. *Commercial Club of Omaha v. S. P. Co.* 631.

Previous order of suspension vacated. *In re Proposed Schedules of Rates on Lumber*, 575.

RELATIVE ADJUSTMENT.

Since present relation of rates must be maintained, if any route be required to maintain present scale between New York and Chicago, no advance by any line can be made. *In re Advances in Rates—Eastern Case*, 243 (272).

RELATIVE RATE.

Apple rate, Utah to North Dakota, via Silver Bow, unreasonable as compared with rate via Omaha. *Stacy & Sons v. O. S. L. R. R. Co.* 136.

Brick rate, Mound Valley, Kans., to Tecumseh, Nebr., not unreasonable nor unjustly discriminatory as compared with rate to Lincoln, Nebr. *Nebraska Material Co. v. C. B. & Q. R. R. Co.* 89.

Class rates, St. Louis to Texas common points, unreasonable and discriminatory when tested by rates to other points. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (485).

Cottonseed rate, Missouri to Memphis, unreasonable and discriminatory in relation to rates to East St. Louis. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.* 33.

Cypress lumber rate, Minot, Miss., to Davenport, Iowa, discriminatory in so far as it exceeds rate to Rock Island and Moline, Ill. *Davenport Commercial Club v. Y. & M. V. R. R. Co.* 19 (20).

Difficult to see how Commission would enforce or permit a rate upon grain from Buffalo materially lower than rate upon flour manufactured at Buffalo from that grain. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (510).

RELATIVE RATE—Continued.

Joint through rate over another road held not to be proper basis for reparation.

Iola Portland Cement Co. *v.* M. K. & T. Ry. Co. 91.

Live-stock rate, Klamath Falls, Oreg., to Portland, Oreg., not unreasonable as compared with rate to San Francisco. Carstens Packing Co. *v.* S. P. Co. 165 (166).

Lumber rate, Brilliant, Ala., to Thebes, Ill., unreasonable as compared with rate to Cairo, Ill. Beekman Lumber Co. *v.* I. C. R. R. Co. 98 (99).

Maintenance of rail-lake-and-rail rates from eastern points to Ashland, Wis., which are higher than rail-and-lake rates to Duluth, not unlawful, boats not stopping at Ashland. City of Ashland *v.* N. Y. C. & H. R. R. Co. 3.

Petroleum rate, Flat Rock, Ill., to Findlay, Ohio, not relatively unreasonable. National Refining Co. *v.* C. C. C. & St. L. Ry. Co. 649 (651).

Refrigeration rate on citrus fruits, California to eastern markets, compared with rates from Florida. Arlington Heights Fruit Exchange *v.* S. P. Co. 106 (111).

Tested by tolls exacted for passage over other bridges, passenger rate for passage across Dubuque bridge not found unreasonable. Railroad Commissioners of Iowa *v.* I. C. R. R. Co. 181 (189).

Tobacco rate, Ephrata, Pa., to Richmond, Va., not unduly discriminatory as compared with rate, Lancaster, Pa., to Richmond. American Cigar Co. *v.* P. & R. Ry. Co. 81.

Vegetable rate, Charleston, S. C., to east, not unreasonable as compared with water-compelled rates from Norfolk. Truck Growers Asso. *v.* A. C. L. R. R. Co. 190 (194).

Vegetable rate, Charleston, S. C., district to Buffalo, N. Y., unreasonable to extent that it exceeds combination on Baltimore. National League of Commission Merchants of U. S. *v.* A. C. L. R. R. Co. 132.

Wrought-iron pipe rate, Youngstown, Ohio, to Liberal, Kans., not unreasonable as compared with rate to Texola, Okla. Blake & Son Hardware & Mfg. Co. *v.* B. & O. R. R. Co. 139.

RELEASED LIABILITY. See LIMITATION OF LIABILITY.**RELEASED RATE.**

Released valuation omitted from bill of lading through inadvertence; reparation awarded on basis of released rate. Miller & Lux *v.* S. P. Co. 129.

Tariff required invoice value to be stated in bill of lading in order to secure lower rate dependent upon value; condition not complied with; reparation denied.

Dells Paper & Pulp Co. *v.* C. & N. W. Ry. Co. 419.

REPARATION. See also DAMAGES.

Award of reparation not enforceable as such; is prima facie evidence in court. Anadarko Cotton Oil Co. *v.* A. T. & S. F. Ry. Co. 43 (49).

Commission may order refund of charges based on weight in excess of actual weight.

Noble *v.* St. L. S. W. Ry. Co. 62; Peters *v.* O. S. L. R. R. Co. 598 (598); Wheeler Lumber, Bridge & Supply Co. *v.* A. & C. R. R. R. Co. 10 (11).

Commutation ticket lost; reparation awarded. Moore *v.* N. Y. & L. B. R. R. Co. 557 (558).

Complaint brought by commission merchants and others; reparation to be awarded.

National League of Commission Merchants of U. S. *v.* A. C. L. R. R. Co. 132 (135).

Concurrence in guide book but no concurrence in rate; not basis of reparation, tariff rate not being unreasonable. Noble *v.* G. T. W. Ry. Co. 70 (71).

Difficult to award reparation to complainant carrier on account of rates in establishment and division of which it was a party. Kaul Lumber Co. *v.* C. of G. Ry. Co. 450 (454).

Fixing rate for future is not prerequisite to award of reparation. Steinfeld & Co. *v.* I. C. R. R. Co. 12 (14).

Higher rate charged because goods not properly marked; reparation awarded. C. H. Algert Co. *v.* D. & R. G. R. R. Co. 93 (94).

REPARATION—Continued.

In absence of tariff limiting free time, shipment placed in public warehouses; storage charges accrued; reparation denied. *Goldenberg v. Clyde S. S. Co.* 527.

Initial carrier liable for reparation where it published joint through rate in which connecting carriers named had not concurred, combination rate, legally applicable, being found unreasonable. *Texico Transfer Co. v. L. & N. R. R. Co.* 17.

Instructions were to use most direct route with through rate; no rate was applicable from origin to destination; shipment sent via circuitous route; rate via route used not unreasonable, but reparation awarded on basis of subsequently established rate via more direct route. *Samuels & Co. v. St. L. S. W. Ry. Co.* 646 (648).

Joint through rate over another road held not to be proper basis for reparation. *Iola Portland Cement Co. v. M. K. & T. Ry. Co.* 91 (92).

Jurisdiction exists to award rate damages resulting from misrouting. *Noble v. J. L. C. & E. R. R. Co.* 520.

Jurisdiction exists to award reparation though rate charged was not a tariff rate. *Goldenberg v. Clyde S. S. Co.* 527 (528); *Maxwell v. W. F. & N. W. Ry. Co.* 197 (198).

Lighterage allowance granted competitor and denied complainant; reparation to be awarded upon filing detailed statement. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (217).

Misquotation of rate; no basis for reparation. *Scott v. T. & N. O. R. R. Co.* 167 (168).

Order for reparation must be based upon affirmative evidence that rate is unreasonable or unjustly discriminatory, in absence of admission. *Noble v. G. T. W. Ry. Co.* 70 (71).

Rate not being paid by complainant; no order for reparation entered. *Fullerton Powell Hardwood Lumber Co. v. V. & S. W. Ry. Co.* 86 (88); *Kaul Lumber Co. v. C. of G. Ry. Co.* 450 (454); *Rosenblatt & Sons v. C. & N. W. Ry. Co.* 447 (448).

Reductions required; reparation denied. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (485).

Released valuation omitted from bill of lading through inadvertence; reparation awarded. *Miller & Lux v. S. P. Co.* 129.

Reparation denied on basis of rate held discriminatory as against another shipper and in favor of complainant, complainant not being damaged, all its competitors from same field having paid same rate. *International Salt Co. v. P. R. R. Co.* 539.

Reparation awarded where demurrage and unloading and reloading expense resulted from carrier's wrongful refusal to deliver car until excessive charges were paid. *Schulz Co. v. C. M. & St. P. Ry. Co.* 403 (405).

Reparation awarded, demurrage having accrued as result of connecting carrier's refusal to accept shipment within free time allowed for reconsignment. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (570).

Reparation by no means necessarily follows reduction of rate, whether voluntarily by carrier or by order of Commission. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (50); *Riverside Mills v. G. R. R.* 423 (425).

Reparation denied, though rate required to be reduced. *Sweeney, Lynes & Co. v. N. Y. P. & N. R. R. Co.* 600 (602).

Reparation upon proof of claims. *National League of Commission Merchants of U. S. v. A. C. L. R. R. Co.* 132 (135).

Reparation denied on basis of short-term commodity rate which would have been applicable, carriers alleged, but for clerical error. *Du Pont de Nemours Powder Co. v. D. & N. R. R. Co.* 83.

Reparation denied on basis of subsequently established lower rate. *Georgia-Carolina Brick Co. v. S. Ry. Co.* 148; *Parfrey v. C. M. & St. P. Ry. Co.* 104 (105); *Riverside Mills v. G. R. R.* 423 (425).

REPARATION—Continued.

Reparation awarded on basis of transit privilege temporarily withdrawn through inadvertence of carriers. *Crescent Lumber Co. v. M. & O. R. R. Co.* 230.

Reparation ordinarily will not be awarded unless claimed before submission of case; reparation denied. *Freeman Lumber Co. v. St. L. I. M. & S. Ry.* 612 (613).

Whether assignee can sue in his own name, not decided. *O'Brien Commercial Co. v. C. & N. W. Ry. Co.* 68 (69).

REPARATION—CLASSIFIED LIST.**DISCRIMINATION:**

Davenport Commercial Club v. Y. & M. V. R. R. Co. 19.

Federal Sugar Refining Co. v. B. & O. R. R. Co. 200 (217).

Sondheimer Co. v. I. C. R. R. Co. 606.

MISROUTING:

C. H. Algert Co. v. D. & R. G. R. R. Co. 93 (94).

Noble v. J. L. C. & E. R. R. Co. 520 (523).

Platten Produce Co. v. K. L. S. & C. Ry. Co. 543.

Samuels & Co. v. St. L. S. W. Ry. Co. 646 (648).

OVERCHARGE:

American Cigar Co. v. P. & R. Ry. Co. 81.

Browne Grain Co. v. G. C. & S. F. Ry. Co. 163.

Edison Portland Cement Co. v. D. L. & W. R. R. Co. 95 (96).

Georgia-Carolina Brick Co. v. S. Ry. Co. 148 (149).

National Refrigerator & Butcher Supply Co. v. I. C. R. R. Co. 64.

Pacific Coast Biscuit Co. v. S. P. & S. Ry. Co. 546 (549).

Platten Produce Co. v. K. L. S. & C. Ry. Co. 543 (544).

Scheuing v. L. & N. R. R. Co. 550 (553).

Wheeler Lumber, Bridge & Supply Co. v. A. & C. R. R. R. Co. 10 (11).

UNREASONABLE RATE:

Alpha Portland Cement Co. v. P. R. R. Co. 640.

Barr Chemical Works v. P. & R. Ry. Co. 77 (78).

Barrett Mfg. Co. v. C. M. & St. P. Ry. Co. 79 (80).

Beekman Lumber Co. v. I. C. R. R. Co. 98 (99).

Browne Grain Co. v. G. C. & S. F. Ry. Co. 163 (164).

Crescent Coal & Mining Co. v. B. & O. R. R. Co. 559 (570).

Crescent Lumber Co. v. M. & O. R. R. Co. 230.

Gamble-Robinson Fruit Co. v. N. P. Ry. Co. 421 (422).

Gumm v. E. P. & R. I. Ry. Co. 237 (238).

Hartman Furniture & Carpet Co. v. C. R. I. & P. Ry. Co. 496 (497).

Henry v. E. Ry. Co. 171 (173).

McCaull-Dinsmore Co. v. C. M. & St. P. Ry. Co. 15.

Maxwell v. W. F. & N. W. Ry. Co. 197 (199).

Miller & Lux v. S. P. Co. 129 (131).

National League of Commission Merchants of U. S. v. A. C. L. R. R. Co. 132 (135)

Noble v. St. L. S. W. Ry. Co. 62.

Parfrey v. C. M. & St. P. Ry. Co. 104 (105).

Peters v. O. S. L. R. R. Co. 598 (599).

Rosenblatt & Sons v. C. & N. W. Ry. Co. 447 (449).

Scheuing v. L. & N. R. R. Co. 550 (553).

Schulz Co. v. C. M. & St. P. Ry. Co. 403 (404).

Steinfeld & Co. v. I. C. R. R. Co. 12.

Texico Transfer Co. v. L. & N. R. R. Co. 17.

W. E. Caldwell Co. v. C. I. & L. Ry. Co. 412 (413).

UNREASONABLE RULE:

C. H. Algert Co. v. D. & R. G. R. R. Co. 93 (94).

Moore v. N. Y. & L. B. R. R. Co. 557 (558).

RES ADJUDICATA.

Decision in *In re Advances in Rates—Western Case*, 20 I. O. C. 307, conclusive of question of alleged need of additional revenue. *In re Investigation of Advances in Rates on Cement*, 588 (591).

RESHIPPING RATE.

Reshipping rate on grain at Chicago applicable except where transit rate applies. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (513).

RESTAURANT.

Restaurant at station, no part of transportation service. *Southwestern Produce Distributers v. W. R. R. Co.* 458 (460).

RESTRICTED RATES.

Coal rates restricted to certain consignors or consignees or when coal is for particular use, condemned. *In re Restricted Rates*, 426.

RETROACTIVE.

Reparation awarded on basis of transit privilege temporarily withdrawn through inadvertence. *Crescent Lumber Co. v. M. & O. R. R. Co.* 230.

Reparation awarded on basis of transit privilege specifically made applicable after date of movement; not viewed as retroactive application of transit privilege, the privilege being held applicable to a station not specifically mentioned in tariff. *Henry v. E. Ry. Co.* 171.

REVENUE. See also TON PER MILE REVENUE.

Fact that net earnings may be large does not of itself justify Commission in fixing a rate at less than is reasonable for service. *Railroad Commissioners of Iowa v. I. C. R. R. Co.* 181 (186).

Fact that road may be operated at a loss does not justify rates unreasonably high for service performed. *Railroad Commissioners of Iowa v. I. C. R. R. Co.* 181 (186).

Never before have net earnings of railroads equaled those for year 1910. *In re Advances in Rates—Eastern Case*, 243 (252); *In re Advances in Rates—Western Case*, 307 (316).

No such need of additional revenue as to justify advance in rates. *In re Advances in Rates—Eastern Case*, 243 (305); *In re Advances in Rates—Western Case*, 307 (378).

Question of revenue is fundamental and ever-present in considering reasonableness of rates, although seldom controlling where single rates are presented. *In re Advances in Rates—Eastern Case*, 243 (248).

Question of revenue must play a not inconsiderable part in determining reasonableness of rates. *In re Advances in Rates—Western Case* 307 (315).

Revenues increased as result of prohibition of rebates. *In re Advances in Rates—Eastern Case*, 243 (284); *In re Advances in Rates—Western Case*, 307 (353); *Shoemaker v. C. & P. Tel. Co.* 614 (618).

Revenue considered. *Boyle v. G. F. & O. D. R. R. Co.* 232 (233).

Revenue under advanced rates not unduly large. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (484).

Strictly speaking, no jurisdiction to say defendants are justified in advancing rates for purpose of obtaining greater net revenues. *In re Advances in Rates—Eastern Case*, 243 (247).

RISK.

Risk, an element for consideration in determining reasonableness of rates. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (111); *Millinery Jobbers Asso. v. American Express Co.* 498 (502); *Ohio Face Brick Mfrs. Asso. v. Adams Express Co.* 582 (584).

RISK—Continued.

Risk frequently greater in manufactured products. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 37 (40).

Risk is less in railroad than in most industrial operations. *In re Advances in Rates—Eastern Case*, 243 (263).

ROUND-TRIP TICKET. *See EXCURSION RATE.***ROUTES.** *See also MISROUTING.*

Not of much importance to public by what route traffic is handled. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (507).

ROUTING INSTRUCTIONS. *See MISROUTING.***RULES AND REGULATIONS.**

Commission has authority to determine reasonableness of regulations not covered by tariff on file. *Goldenberg v. Clyde S. S. Co.* 527 (528).

Conditioning refund upon return of lost ticket, unreasonable. *Moore v. N. Y. & L. B. R. R. Co.* 557 (558).

Higher rating on packages not properly marked, unreasonable. *C. H. Algert Co. v. D. & R. G. R. R. Co.* 93 (94).

Rule was neither unreasonable nor discriminatory which required low-priced cotton-factory products to be plainly marked on outside of package and stated in bill of lading in order to secure lower rate; reparation denied. *Muse Bros. Co. v. C. R. I. & P. Ry. Co.* 235 (236).

Rule should be established permitting charges to be based on minimum fixed for car ordered, where carrier furnishes larger car; reparation awarded. *Noble v. B. & O. R. R. Co.* 72 (73).

Rule was unreasonable which provided that shipments should not be weighed except at point of origin. *Peters v. O. S. L. R. R. Co.* 598.

Rule held unreasonable under which delivery of live stock was made only at Union Stock Yards. *Baltimore Butcher Live Stock Co. v. P. B. & W. R. R. Co.* 124 (128.)

SALE.

Sale by carrier of alleged misrouted shipment. *Fullerton Powell Hardwood Lumber Co. v. V. & S. W. Ry. Co.* 86 (87).

Sale by carrier of 1,000 coal-cars to single shipper. *Bulah Coal Co. v. P. R. R. Co.* 52 (54).

SCALING RATES.

Competitive rate on salt, New York to Chicago, need not be scaled by percentages to intermediate points in C. F. A. territory. *International Salt Co. v. G. & W. R. R. Co.* 530.

SCHOOL CHILDREN.

Reduced rates restricted to school children, discriminatory. *In re Restricted Rates*, 426 (428).

SCIENTIFIC MANAGEMENT. *See also MANAGEMENT.*

Commission can not find that scientific management would offset wage increases. *In re Advances in Rates—Eastern Case*, 243 (279).

Premium must be put upon efficiency in railroad operation. *In re Advances in Rates—Western Case*, 307 (333).

SECRET RATES.

Alleged. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.* 33 (34).

SECTION TWO. *See DISCRIMINATION.***SECTION THREE.** *See DISCRIMINATION, PREFERENCE.***SECTION THIRTEEN.** *See COMPLAINT.***SECTION FIFTEEN.** *See ALLOWANCES, BURDEN OF PROOF, INVESTIGATION AND SUSPENSION, THROUGH ROUTES AND JOINT RATES.***SECTION SIXTEEN.** *See LIMITATION OF ACTION.*

SEGREGATION OF EXPENSES.

Segregation of passenger and freight expenses. In re Advances in Rates—Eastern Case, 243 (254); In re Advances in Rates—Western Case, 307 (357).

SET-OFF.

No order entered for reparation because refund, erroneously made, was in excess of amount of reparation upon basis of rate found to be reasonable. *W. E. Caldwell Co. v. C. I. & L. Ry. Co.* 412 (413).

SHORT-TERM RATE.

Reparation denied on basis of short-term commodity rate which would have been applicable, carriers alleged, but for clerical error. *Du Pont de Nemours Powder Co. v. D. & N. R. R. Co.* 83.

SIDETRACK.

Carrier required to deliver live stock to complainant's sidetrack. *Baltimore Butchers Live Stock Co. v. P. B. & W. R. R. Co.* 124 (128).

Carrier may insist upon release from liability for fires on complainant's premises as condition precedent to operation of private sidetrack. *Imperial Wheel Co. v. St. L. I. M. & S. Ry. Co.* 56 (58).

SLEEPING-CAR RATES.

Upper and lower berth rates prescribed. *Loftus v. Pullman Co.* 21; *State of Oklahoma v. Pullman Co.* 25.

SPECULATIVE DAMAGES. See also DAMAGES.

Damages due to inability to compete in common market can not become subject of reparation. *Sondheimer Co. v. I. C. R. R. Co.* 606 (608).

SPOTTING CARS.

Carrier may insist upon release from liability for fires on complainant's premises as condition precedent to spotting cars there. *Imperial Wheel Co. v. St. L. I. M. & S. Ry. Co.* 56 (58).

STATE LAW.

Local law under which electric line has no right to demand switch connection with steam roads, can not operate as impediment to interstate traffic. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (488).

Probable effect of state prohibition law upon tonnage, immaterial. *Scheuing v. L. & N. R. R. Co.* 550 (552).

STATE POLICY.

State policy not respected where it interferes with application of reasonable rates for interstate service. *Cobb v. N. P. Ry. Co.* 100 (103).

STATE RATES.

Harmony should exist between state and interstate rates. *Cobb v. N. P. Ry. Co.* 100 (102).

STATE TRAFFIC.

No jurisdiction over shipment moving from one point to another in same state, though intended for, and subsequently rebilled to, point beyond state. *Big Canon Ranch Co. v. G. H. & S. A. Ry. Co.* 523.

STATION.

Carriers' stations, etc., are to certain extent private property; granting to auction company exclusive terminal warehouse facilities, not condemned. *Southwestern Produce Distributors v. W. R. R. Co.* 458 (461).

Receiving station operated by competitor is not a reasonable facility to offer shipper. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 200 (211).

STATUTE OF LIMITATION. See LIMITATION OF ACTION.**STOCKS AND BONDS.**

Not within Commission's function to place limitations on purposes for which stocks and bonds may be issued nor to designate what property they shall represent. In re Advances in Rates—Western Case, 307 (334).

STOCKS AND BONDS—Continued.

Ownership of stock does not entitle roads to carry free for each other. In re *Restricted Rates*, 426 (427).

Railroad stocks in future will lose much of their speculative character. In re *Advances in Rates—Eastern Case*, 243 (265).

STOPS.

No authority to compel lake lines to run boats to Ashland. *City of Ashland v. N. Y. C. & H. R. R. Co.* 3 (5).

STORAGE. See also DEMURRAGE.

In absence of tariff limiting free time, goods were placed in public warehouse and subjected to storage charges; reparation denied. *Goldenberg v. Clyde S. S. Co.* 527.

Salt traffic by the lake enjoys free storage at Chicago. *International Salt Co. v. G. & W. R. R. Co.* 530 (534).

STREET RAILROAD. See ELECTRIC LINE.**STUB LINES.**

Absorption of rates of stub lines transporting lumber to main-line points. In re *Proposed Schedule of Rates on Lumber*, 574 (577).

Stub trains used for carrying passengers across river. *Railroad Commissioners of Iowa v. I. C. R. R. Co.* 181 (183).

SUBSIDIARY COMPANY.

Identity of interests between salt company and transportation lines. *International Salt Co. v. G. & W. R. R. Co.* 530 (533).

Stock ownership does not entitle roads to carry free for each other. In re *Restricted Rates*, 426 (427).

SUBSIDIES.

Subsidies granted to American railroads. In re *Advances in Rates—Western Case*, 307 (318).

SUBSTITUTION IN TRANSIT.

Impracticable to preserve identity of inbound and outbound lumber at yarding-in-transit point. *Sondheimer Co. v. I. C. R. R. Co.* 606 (608).

SUPPLEMENTAL.

Five additional cars included in cases though not mentioned in original petition. *Gamble-Robinson Fruit Co. v. N. P. Ry. Co.* 421.

Reparation denied; not claimed in original petition. *Freeman Lumber Co. v. St. L. I. M. & S. Ry. Co.* 612 (613).

SURPLUS.

Commission can not properly permit advance in rates with intent to produce accumulation of surplus for purposes indicated. In re *Advances in Rates—Eastern Case*, 243 (270).

Legitimate ends for which surplus may be accumulated. In re *Advances in Rates—Western Case*, 307 (331).

SUSPENSION OF RATES. See INVESTIGATION AND SUSPENSION.**SWITCH CONNECTION.**

Electric line granted switch connections with steam roads. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486.

Whether carrier could be compelled to establish reciprocal switching arrangement, not decided; having entered into such arrangement, under tariff authority, carrier must accept shipments for delivery to extent of its capacity. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (565).

SWITCHING.

No misrouting to forward unrouted shipment via one route, though terminal delivery more satisfactory to consignee could have been secured without additional charge via another available route. *Bookwalter Wheel Co. v. T. C. R. R. Co.* 603.

SWITCHING—Continued.

Whether carrier could be compelled to establish reciprocal switching arrangement, not decided; having entered into such arrangement, under tariff authority, carrier must accept shipments for delivery to extent of its capacity. *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (565).

TAP LINE. See LOGGING ROAD.**TARIFF.**

Classification should be clearly stated. *Pacific Coast Biscuit Co. v. S. P. & S. Ry. Co.* 546 (549).

Commission's rule concerning supplements to tariffs. In re Proposed Schedules of Rates on Lumber, 575 (576).

Defective tariff naming lower rate considered in determining reasonableness of higher rate legally applicable. *Steinfeld & Co. v. I. C. R. R. Co.* 12 (13).

Index, sufficient to comply with Commission's rules. *Western Mantle Co. v. S. P. & S. Ry. Co.* 643 (645).

Rules of tariff interpretation were not strictly applicable to old issues. *Henry v. E. Ry. Co.* 171 (172).

Tariffs are to be construed according to their language; intent of framers or arbitrary practice of carriers does not govern. *Pacific Coast Biscuit Co. v. S. P. & S. Ry. Co.* 546 (549).

Tariff ambiguous in that it did not define meaning of "knocked down." *Pacific Coast Biscuit Co. v. S. P. & S. Ry. Co.* 546 (548).

Tariffs could not be used until Commission's rules were complied with. *Noble v. G. T. W. Ry. Co.* 70 (71).

Tariff was such as to lead to confusion and discrimination in application of different rates to similar mixed carloads. *Barrett Mfg. Co. v. C. M. & St. P. Ry. Co.* 79 (80).

TELEGRAPH.

Damages denied for outlay in telegraph charges accrued in correspondence over demand for excessive rate. *Schulz Co. v. C. M. & St. P. Ry. Co.* 403 (405).

Telegraph office at station is no part of transportation service. *Southwestern Produce Distributors v. W. R. R. Co.* 458 (460).

TELEPHONE.

Demanding higher charges of new subscribers than demanded of old subscribers for same telephone service and facilities constituted unlawful discrimination and preference. *Shoemaker v. C. & P. Tel. Co.* 614 (621).

Telephone office at station is no part of transportation service. *Southwestern Produce Distributors v. W. R. R. Co.* 458 (460).

TERMINAL DELIVERY.

No misrouting to forward unrouted shipment via one route, though terminal delivery more satisfactory to consignee could have been secured over another available route. *Bookwalter Wheel Co. v. T. C. R. R. Co.* 603.

TERMINAL FACILITIES.

No violation of act to grant to auction company exclusive warehouse facilities. *Southwestern Produce Distributors v. W. R. R. Co.* 458.

THROUGH AND LOCAL.

Joint through rate unreasonable to extent that it exceeded combination of locals. *Alpha Portland Cement Co. v. P. R. R. Co.* 640 (643); *Hartman Furniture & Carpet Co. v. C. R. I. & P. Ry. Co.* 496; *National League of Commission Merchants of U. S. v. A. C. L. R. R. Co.* 132 (135); *Rosenblatt & Sons v. C. & N. W. Ry. Co.* 447 (448); *W. E. Caldwell Co. v. C. I. & L. Ry. Co.* 412 (413).

Petition alleging combination rate on sheep to be unreasonable to extent that it exceeded joint through rate on cattle, dismissed on other grounds. *Big Canon Ranch Co. v. G. H. & S. A. Ry. Co.* 523 (524).

THROUGH AND LOCAL—Continued.

Readjustment of salt rates from the east ought to be made where joint through rate to destinations beyond Chicago exceed combination to Chicago plus local beyond. *International Salt Co. v. G. & W. R. R. Co.* 530 (537).

THROUGH ROUTE AND JOINT RATE.

Commission may not require any road to embrace less than entire length of its road between termini of through route. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (490).

Commission ordinarily will not assist one carrier to secure traffic reasonably tributary to another road by requiring through routes and joint rates. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (492).

Damages denied for failure to establish another through route and joint rate over which shipments could have safely moved. *Edison Portland Cement Co. v. D. L. & W. R. R. Co.* 95 (97).

Physical condition of electric line demanding interchange and through routes and joint rates, considered. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (493).

Through routes and joint rates may not be required between steam road and electric road that does not transport freight. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (490).

Through routes and joint rates denied where electric line paralleled or closely approached tracks of steam roads but granted at points five or ten miles distant from steam roads. *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.* 486 (492).

Through route and joint rate via another route required. *Stacy & Sons v. O. S. L. R. R. Co.* 136.

Through route and joint rate via another route denied. *Iola Portland Cement Co. v. M. K. & T. Ry. Co.* 91 (92).

Through route and joint rate required unless one of local factors of combination rate is reduced. *Burton v. U. V. Ry. Co.* 75.

TICKET. See **LOST TICKET.**

TIES.

Cost of. In re Advances in Rates—Eastern Case, 243 (277); In re Advances in Rates—Western Case, 307 (369).

TON PER MILE RATE.

Ton per mile rate considered. In re Advances in Rates—Eastern Case, 243 (285); In re Advances in Rates—Western Case, 307 (360); *Parfrey v. C. M. & St. P. Ry. Co.* 104 (105).

TON PER MILE REVENUE.

Ton per mile revenue considered. *Board of Trade of Chicago v. A. C. R. R. Co.* 504 (506); *Browne Grain Co. v. F. W. & R. G. Ry. Co.* 410 (411); *Henderson Iron Works & Supply Co. v. T. & P. Ry. Co.* 159; In re Investigation of Advances in Rates on Cement, 588 (592); *National Refining Co. v. C. C. C. & St. L. Ry. Co.* 649 (650); *Scott v. T. & N. O. R. R. Co.* 167.

Ton per mile revenue usually decreases as distance increases. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (45); *Meridian Fertilizer Factory v. V. S. & P. Ry. Co.* 554 (555); *Truck Growers Asso. v. A. C. L. R. R. Co.* 190 (193).

Ton per mile revenue is far from conclusive evidence of reasonableness of rate. *Danville Brick Co. v. C. & N. W. Ry. Co.* 239 (241).

Ton per mile earnings of weak line, in this case, properly exceeded those of stronger lines. *Burton v. U. V. Ry. Co.* 75 (76).

Ton per mile earnings reduced by extension of common-point territory in Texas. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (478).

TRACKAGE RIGHTS.

Lease by carrier of trackage rights, over connecting line, to a quarry for hauling ballast for use on its own line, would result in discrimination. *In re Restricted Rates*, 426 (428).

TRANSFER SERVICE.

Transfer service at station is no part of transportation service. *Southwestern Produce Distributors v. W. R. R. Co.* 458 (460).

TRANSIT PRIVILEGE.

Commission does not endeavor to establish or extend transit privileges in absence of discrimination, proof of which is here wanting. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (47).

Feeding-in-transit privilege held applicable from station not specifically mentioned in tariff; reparation awarded. *Henry v. E. Ry. Co.* 171 (172).

No misrouting to forward unrouted shipment via one route, though reconsignment privilege was permitted over another available route. *Crescent Lumber Co. v. I. C. C. R. R. Co.* 228.

Transit privilege temporarily withdrawn through inadvertence; reparation awarded on shipments moving during period when privilege was not permitted. *Crescent Lumber Co. v. M. & O. R. R. Co.* 230.

Yarding-in-transit privilege on lumber, granted at Memphis and denied at Cairo resulted in undue preference under existing rate adjustment; damages awarded. *Sondheimer Co. v. I. C. R. R. Co.* 606.

TRANSPORTATION.

Transportation includes furnishing of car. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (117).

Station restaurants, news stands, barber shops, and similar private enterprises at railroad terminals are no part of transportation service. *Southwestern Produce Distributors v. W. R. R. Co.* 458.

TYPICAL ROADS.

No higher rates ought to be imposed on territory involved than are adequate for typical roads mentioned. *In re Advances in Rates—Eastern Case*, 243 (274).

UNDERCHARGE.

No order entered for reparation because refund, erroneously made, was in excess of amount of reparation upon basis of rate found reasonable; shipper should refund excess. *W. E. Caldwell Co. v. C. I. & L. Ry. Co.* 412 (413).

Undercharge resulted from failure to base rates on actual weight. *Clinton Bridge & Iron Co. v. C. B. & Q. R. R. Co.* 416.

UNDUE PREFERENCE. See PREFERENCE.**UNEARNED INCREMENT.**

Rates, it seems, may not be increased upon a number of commodities solely because its real estate has increased in value. *In re Advances in Rates—Western Case*, 307 (344).

Whether unearned increment is a proper element of valuation, not determined. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (484).

UNJUST DISCRIMINATION. See DISCRIMINATION.**USE.**

Carrier has no right to dictate uses to which commodity shall be put. *In re Restricted Rates*, 426 (427).

Restricting rates on coal when intended for particular use constituted unjust discrimination. *In re Restricted Rates*, 426.

Tariff rate must be applied, regardless of use to which commodity is put. *Pacific Coast Biscuit Co. v. O. R. R. & N. Co.* 178 (180).

VALUATION.

Capitalization can not be accepted as representing value. In re Advances in Rates—Western Case, 307 (320).

Commission has no authority to put a value upon railroad property or to prescribe elements to be considered in determining that value. In re Advances in Rates—Eastern Case, 243 (256).

Congress urged to authorize valuation of railroads. In re Advances in Rates—Eastern Case, 243 (260, 305).

VALUE OF COMMODITY. See also RELEASED RATE.

Ad valorem principle of rate making can never be departed from. In re Advances in Rates—Western Case, 307 (355).

Minute variations in value can not be precisely reflected in classification. *W. E. Caldwell Co. v. C. I. & L. Ry. Co.* 412 (415).

Value of commodity as an element for consideration in determining reasonableness of rates. *Barr Chemical Works v. P. & R. Ry. Co.* 77 (78); *Commercial Club of Omaha v. S. P. Co.* 631 (635); *Dells Paper & Pulp Co. v. C. & N. W. Ry. Co.* 419 (420); *Nucoa Butter Co. v. E. R. R. Co.* 174 (176); *Ohio Face Brick Mfrs. Asso. v. Adams Express Co.* 582 (584); *Rosenblatt & Sons v. C. & N. W. Ry. Co.* 447 (448); *Truck Growers' Asso. v. A. C. L. R. R. Co.* 190 (194).

VALUE OF SERVICE.

Rate involved appears already to be paying due share of value of service. In re Advances in Rates—Western Case, 307 (378); In re Investigation of Advances in Rates on Cement, 588 (592).

Under regulation a reasonable rate is one which shipper should pay in justice to carrier which renders the service. In re Advances in Rates—Western Case, 307 (356).

Value of service, as element for consideration in determining reasonableness of rate. In re Advances in Rates—Western Case, 307 (354); *Ohio Face Brick Mfrs. Asso. v. Adams Express Co.* 582 (584); *Railroad Commissioners of Iowa v. I. C. R. R. Co.* 181 (186).

VOLUME.

During many months nearly one-half of entire eastern movement upon one trans-continental line is made up of oranges and lemons. *Arlington Heights Fruit Exchange v. S. P. Co.* 106 (117).

Fact that, for a long time, there has been no movement of a particular commodity does not justify unreasonable rate. *Scheuing v. L. & N. R. R. Co.* 550.

Increase in railroad traffic. In re Advances in Rates—Eastern Case, 243 (285); In re Advances in Rates—Western Case, 307 (366); *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (481).

VOLUNTARY RATE AND VOLUNTARY REDUCTION.

Reduction of rate nearly two years after movements does not raise presumption of unreasonableness. *Independent Supply Co. v. C. & P. R. R. Co.* 66 (67).

Reduction to meet rate applicable via shorter route, not of itself conclusive evidence of unreasonableness. *Georgia-Carolina Brick Co. v. S. Ry. Co.* 148 (149).

Reparation awarded on basis of voluntarily reduced rate. *Browne Grain Co. v. G. C. & S. F. Ry. Co.* 163 (164); *Gamble-Robinson Fruit Co. v. N. P. Ry. Co.* 421 (422); *Maxwell v. W. F. & N. W. Ry. Co.* 197 (198).

Reparation denied on basis of rate reduced to meet competitive rate. *Morrell & Co. v. C. B. & Q. R. R. Co.* 400 (402).

Reparation denied on basis of reduced rate, though reparation was awarded on another basis. *Parfrey v. C. M. & St. P. Ry. Co.* 104 (105).

Reparation by no means follows reduction of rate, whether by voluntary action or by Commission's order. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (50); *Riverside Mills v. G. R. R.* 423 (425).

VOLUNTARY RATE AND VOLUNTARY REDUCTION—Continued.

Reparation denied on basis of subsequently reduced rate. *Carstens Packing Co. v. S. P. Co.* 165 (166).

Reparation denied on basis of lower rate temporarily in effect via route of movement and still in effect via shorter route. *Browne Grain Co. v. F. W. & R. G. Ry. Co.* 410.

Voluntary reduction is not of itself evidence of unreasonableness. *Maxwell v. W. F. & N. W. Ry. Co.* 197 (198).

Voluntary reduction over another route, caused by competition, held not an admission of unreasonableness. *American Cigar Co. v. P. & R. Ry. Co.* 81 (82).

WAGES.

Wage increases, discussed. In re Advances in Rates—Eastern Case, 243 (253); In re Advances in Rates—Western Case, 307 (370); Railroad Commission of Tex. *v. A. T. & S. F. Ry. Co.* 463 (481).

WASHINGTON, ALEXANDRIA & MT. VERNON RY. CO.

Capitalization and earnings. *Beall v. W. A. & M. V. Ry. Co.* 406 (408).

WATER CARRIER.

No authority to compel lake lines to run boats to Ashland. *City of Ashland v. N. Y. C. & H. R. R. Co.* 3 (5).

WATER COMPETITION.

Inducing lower rate via longer route. *American Cigar Co. v. P. & R. Ry. Co.* 81 (82.) Justifying exception to long-and-short-haul principle. *International Salt Co. v. G. & W. R. R. Co.* 530 (537).

Potential water competition considered in fixing rates. *Audley Hill & Co. v. S. Ry. Co.* 225 (226).

Rates not properly comparable where water competition controls. *Truck Growers Asso. v. A. C. L. R. R. Co.* 190 (194).

Rates adjacent to Mississippi River, influenced by water competition which diminishes as distance from river increases. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 43 (45).

Shippers should receive benefit of recognition of water competition. *Steinfeld & Co. v. I. C. R. R. Co.* 12 (14).

Through rate in excess of combination of locals, not justified by water competition. *National League of Commission Merchants of U. S. v. A. C. L. R. R. Co.* 132 (134).

WATERED STOCK. See CAPITALIZATION.**WEAK LINE.**

Almost axiomatic that rates can not be made so as to give high earnings to poorly placed, indifferently operated, or isolated road, without making rates extortionate. In re Advances in Rates—Western Case, 307 (377).

Ton per mile earnings of weak line, in this case, properly exceed those of stronger lines. *Burton v. U. V. Ry. Co.* 75 (76).

WEIGHT. See also MINIMUM.

Actual weight of shipment constituted true basis of rates; overweight; reparation awarded. *Peters v. O. S. L. R. R. Co.* 598 (599).

Alleged discrimination from use of graduated weights; question not decided. *Millinery Jobbers Asso. v. American Express Co.* 498 (503).

Car might have been loaded so that actual weight would have been basis of charges in second car; consignor loaded cars; carrier not responsible. *Consolidated Water Power & Paper Co. v. S. P. L. A. & S. L. R. R. Co.* 169 (170).

Classification rule applying minimum weights on shipments in corrugated paper or pulp cartons of certain size, when uncrated, instead of using actual weight, unreasonable. *Millinery Jobbers Asso. v. American Express Co.* 498.

Commission may order refund of charges based on weight in excess of actual weight. *Wheeler Lumber, Bridge & Supply Co. v. A. & C. R. R. Co.* 10 (11).

WEIGHT—Continued.

No objection to specific or estimated package rates. National League of Commission Merchants of U. S. *v.* A. C. L. R. R. Co. 132 (135).

Positive evidence of incorrectness of carrier's scaling is necessary before another weight can be substituted. *Browne Grain Co. v. G. C. & S. F. Ry. Co.* 163 (164); *Noble v. D. & T. S. L. R. R. Co.* 60 (61).

Rates based on minimum weight in accordance with tariff. *O'Brien Commercial Co. v. C. & N. W. Ry. Co.* 68 (69).

Rule should be established permitting charges to be based on minimum fixed for car ordered, where carrier furnishes larger car; reparation awarded. *Noble v. B. & O. R. R. Co.* 72 (73).

Shipment weighted twice; scalings different; reparation awarded on basis of lower weight. *Noble v. St. L. S. W. Ry. Co.* 62.

Shipper, who orders and uses car of a certain size, must pay rate applicable thereto, though lower rate would have been available by loading in a different kind of car; had shipment been delivered to carrier for loading, carrier would have been under duty of loading in manner which would result in application of lowest rate. *Clinton Bridge & Iron Works v. C. B. & Q. R. R. Co.* 416 (417).

Tariff rule providing that coal should not be weighed except at point of origin, unreasonable. *Peters v. O. S. L. R. R. Co.* 598 (599).

Undercharge resulted from failure to base rates on actual weight. *Clinton Bridge & Iron Works v. C. B. & Q. R. R. Co.* 416.

Weight of article considered in determining classification. *Barrett Mfg. Co. v. C. M. & St. P. Ry. Co.* 79 (80); *W. E. Caldwell Co. v. C. I. & L. Ry. Co.* 412 (415).

Weight obtained by weighing both trucks at a time preferred to scaling obtained by weighing trucks separately. *Wheeler Lumber, Bridge & Supply Co. v. A. & C. R. R. R. Co.* 10 (11).

WESTERN ROADS.

History and operation. In re Advances in Rates—Western Case, 307 (324).

WESTERN TRUNK LINE TERRITORY.

Described. In re Advances in Rates—Western Case, 307 (309).

WHAT TRAFFIC WILL BEAR.

Advances made because traffic would bear advances. *Railroad Commission of Tex. v. A. T. & S. F. Ry. Co.* 463 (482).

Graduated advances in cement rates. In re Investigation of Advances in Rates on Cement, 588 (596).

Least-possible-rate-that-traffic-will-bear theory discussed. In re Advances in Rates—Western Case, 307 (354).

To base rates upon shipper's ability to pay is to base rates upon cost of production rather than cost of carriage: this is regulation of industries and commerce by railroads. In re Advances in Rates—Western Case, 307 (350).

WORDS AND PHRASES.

"Balloon packages." *Millinery Jobbers Asso. v. American Express Co.* 498 (500).

"Billed flat." *Crescent Coal & Mining Co. v. B. & O. R. R. Co.* 559 (562).

"Cocoa butter." *Nucoa Butter Co. v. E. R. R. Co.* 174 (177).

"Contemporaneous service." In re Restricted Rates, 426 (434).

"Corrugated cartons." *Millinery Jobbers Asso. v. American Express Co.* 498 (499).

"Cost of carrying ton of freight a mile." In re Advances in Rates—Western Case, 307 (358).

"Cotton linters." *Samuels & Co. v. St. L. S. W. Ry. Co.* 646 (647).

"Glue stock." *Barr Chemical Works v. P. & R. Ry. Co.* 77 (78).

"Lard." *Nucoa Butter Co. v. E. R. R. Co.* 174 (175).

"Nucoa butter" and "Nucoline." *Nucoa Butter Co. v. E. R. R. Co.* 174 (175).

"Overhead charge." *International Salt Co. v. G. & W. R. R. Co.* 530 (536).